Mr. Justice Clifford
Dec 16 1864 Submitted
on Briefs

SUPREME COURT OF THE UNITED STATES.

No. 184.

JONATHAN H. RANSOM, PLAINTIFF IN ERROR,

vs.

CHESTER K. WILLIAMS AND HORATIO WALES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Affirm

GOVERNMENT PRINTING OFFICE.

No notice to Counsel

Submitted under the 20th
Rule — 14 Dec. 64

post poned
Affirmed
Mr Justice Swayne

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1 Pleas in the circuit court of the United States of America, for the eighth circuit and northern district of Illinois, before the judges thereof, at the city of Chicago, in the district aforesaid, on Saturday, the twenty-eighth day of February, A. D. 1863, in the December term of said court, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh year.

WILLIAM H. BRADLEY, *Clerk.*

JONATHAN H. RANSOM
vs.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and sixty-two, came said plaintiff by his attorneys and filed in the office of the clerk of the circuit court of
2 the United States of America, for the northern district of Illinois, at Chicago, in said district, his bond for costs in said entitled cause, and also his declaration in ejectment against said defendant, together with a notice and affidavit thereto attached; which said bond, declaration, notice, and affidavit are in the words and figures following, to wit:

Circuit court, May term, A. D. 1862.

JONATHAN H. RANSOM
vs.
CHESTER K. WILLIAMS and HORATIO WALES.

THE UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any cost taxed against him.

Dated this 24th day of May, A. D. 1862.

SMITH, HART & CLYDE.

3 Endorsed: Filed May 24th, 1862.

WM. H. BRADLEY, *Clerk.*

Circuit court of the United States, for the seventh circuit and northern district of Illinois, of the May term, A. D. 1862.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Jonathan H. Ransom, who is a citizen of the State of New York, plaintiff in this suit, by Smith, Hart & Clyde, his attorneys, complains of Chester K. Williams and Horatio Wales, who are citizens of the State of Illinois, defendants in this suit, in a plea of ejectment; for that whereas the said plaintiff, on the first day of May, in the year one thousand eight hundred and sixty two, was possessed of the following real estate and premises, situate in the county of Ogle, in the State of Illinois, and being known and described as follows, to wit:

The east three fourths part of the east half of the northwest quarter of section twenty (20) in township twenty-three (23) north, range eight (8)

east, of the fourth principal meridian, more fully described as fol-
4 lows: Commencing at the northeast corner of the said northwest quarter; thence south along the quarter section line one hundred and sixty rods; thence west sixty rods; thence north parallel with the first course one hundred and sixty rods to the north line of said quarter; thence east along the north line of said quarter to the place of beginning, containing sixty acres, of the value of three thousand dollars; which said premises the said plaintiff claims in fee; and he, the said plaintiff, being so possessed thereof, the said defendants afterwards, to wit, on the first day of May, in said last-mentioned year, entered into said premises and ejected the said plaintiff therefrom, and unlawfully withholds from said plaintiff the possession thereof, to the damage of said plaintiff of three thousand dollars, and therefore brings suit, &c.

SMITH, HART & CLYDE,
Attorneys for Plaintiff.

To Chester K. Williams and Horatio Wales:

Take notice that a declaration, of which this is a copy, will be filed with the clerk of the circuit court of the United States, for the seventh circuit and northern district of Illinois, at his office in the city of Chicago,
5 on the twenty-fourth day of May, eighteen hundred and sixty-two; and that upon filing the same a rule will be entered requiring you to appear and plead to such declaration within twenty days after the entry of such rule; and if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff in said declaration will recover possession of the premises.

Dated at Chicago this twenty-first day of May, 1862.

SMITH, HART & CLYDE,
Plaintiff's Attorneys.

STATE OF ILLINOIS, *Cook County, ss:*

Edwin Parker, being duly sworn, on oath says, that on the twenty-second day of May, A. D. 1862, he served this declaration and notice on the within-named Chester K. Williams and Horatio Wales, by delivering to each of them a true copy hereof.

EDWIN PARKER.

Subscribed and sworn to before me this 23d day of May, A. D. 1862.
[SEAL.] MILES ALMY, *Notary Public.*

6 Endorsed: Filed May 24, 1862.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the twenty-fourth day of May, in the adjourned May term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JONATHAN H. RANSOM
vs.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

Now comes the plaintiff, by Smith, Hart & Clyde, his attorneys, who file his declaration in ejectment against the defendants, together with a notice thereto attached, and also an affidavit of a due service of a true copy of said declaration and notice upon the defendants, and on motion of the said plaintiff by his attorneys, it is ordered by the court that the cause be docketed, and that the defendants be ruled to plead thereto within twenty days, or that their defaults be entered.

7 On this day, to wit, the seventh day of June, A. D. 1862, came said defendants, by their attorneys, and filed in said clerk's office their plea in said entitled cause, which said plea is in the words and figures following, to wit:

Circuit court of the United States, for the seventh circuit and northern district of Illinois, of the May term, A. D. 1862.

CHESTER K. WILLIAMS and HORATIO WALES *ads.* JONATHAN H. RANSOM. } Ejectment.

And the said Chester K. Williams and Horatio Wales, by Gallup & Hitchcock, their attorneys, come and defend the force and injury, when, &c., and say that they are not guilty of the said supposed trespass and ejectment above laid to their charge, or of any part thereof, in manner and form as the said Jonathan H. Ransom hath above thereof complained against them, and of this they put themselves upon the country, &c.

GALLUP & HITCHCOCK, *Def't Att'ys.*

8 Endorsed: Filed June 7th, 1862.

WM. H. BRADLEY, *C'k.*

On this day, to wit, the twenty-first day of November, in the adjourned October term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JONATHAN H. RANSOM *v.* CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

Now come the parties, by their attorneys, and, upon issue joined, come a jury of good and lawful men, to wit, George W. Bentley, Samuel H. Gilbert, Theron D. Parker, O. N. Adams, John G. Potts, D. A. Foot, Robert L. Barr, John S. Reed, Henry Sloan, G. Lyman, John Ewing, and Vincent G. Harbaugh, who are all duly elected, tried, and sworn to well and truly try said issue; after hearing the evidence and the instructions of the court, return into court the following verdict: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real
9 estate and premises described in his declaration as follows, to wit: the east three-fourths part of the east half of the northwest quarter of section twenty (20) in township twenty-three (23) north, range (8) east, of the fourth principal meridian, more fully described as follows: Commencing at the northeast corner of the said northwest quarter; thence south along the quarter section line one hundred and sixty rods; thence west sixty rods; thence north parallel with the first course one hundred and sixty rods to the north line of said quarter; thence east along the north line of said quarter to the place of beginning, containing sixty acres, situate in the county of Ogle and State of Illinois; and we further find that the estate established in the plaintiff, on trial, to be an estate in fee simple, and assess the damages at the sum of one cent; and thereupon the defendants, by their attorneys, move the court for a new trial.

On this day, to wit, the eighth day of December, in the adjourned
10 October term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JONATHAN H. RANSOM
v.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

Now come the parties, by their attorneys, and thereupon comes on to be heard the motion of the defendants for a new trial, and, after arguments of counsel, the court overrules said motion and awards judgment on the finding of the jury in this behalf.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of and from the said defendants possession of the real estate and premises described in the plaintiff's declaration, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of and from the said defendants the said sum of one cent in damages, together with the costs and
11 charges herein, amounting to the sum of dollars and cents, and that he have execution therefor.

On this day, to wit, the twelfth day of December, in the adjourned October term, A. D. 1862, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

JONATHAN H. RANSOM
v.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

Now come the defendants, by their attorney, and move the court to vacate and set aside the judgment ent red herein on the eighth day of December, A. D. one thousand eight hundred and sixty-two, and for a new trial of the same under the statute; and it appearing to the court that all the taxed costs had been paid by the defendants, it is thereupon ordered by the court that the cause be redocketed and a new trial thereof awarded.

12 On this day, to wit, the eleventh day of February, A. D. 1863, in the December term of said court, A. D 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JONATHAN H. RANSOM
v.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined come a jury of eleven by agreement of the parties, good and lawful men, to wit: Judson W. Read, G. G. Chilcote, S. W. Kingsley, Samuel Mitchell, W. R. Weld, W. A. Sanger, Frederick A. Horsman, T. D Gail, William James, James McKinney, and Nicholas Strott, who are all duly elected, tried and sworn, to well and truly try said issue, and after hearing evidence in the cause until the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

13 On this day, to wit, the twelfth day of February, A. D. 1863, in the December term of said court, A. D. 1862, in the record of proceedings thereof in said entitled cause is the following entry, to wit:

JONATHAN H. RANSOM
v.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

Now come again the parties, by their attorneys, and come also the jury in this behalf, and after hearing the conclusion of the evidence, the argument of counsel, and instructions of the court, return into court the following verdict: We, the jury, find the defendants not guilty; and thereupon the plaintiff, by his attorney, moves the court to set aside the finding of the jury in this behalf and grant a new trial.

On this day, to wit, the twenty-eighth day of February, A. D. 1863, in the December term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

14 JONATHAN H. RANSOM
v.
CHESTER K. WILLIAMS and HORATIO WALES. } Ejectment.

The court having considered and being fully advised on the motion of the plaintiff for a new trial, overrules the same and awards judgment on the finding of the jury in this behalf.

It is thereupon considered and adjudged by the court that the defendants go hence without day, and that they have and recover of the plaintiff the costs and charges herein by them expended in and about their said defence, and that they have execution therefor.

On the trial of the foregoing cause, the plaintiff took exceptions, which were duly signed and sealed by the judge of said court, which said exceptions are in the words and figures following, to wit:

United States of America, circuit court of the United States for eighth circuit and northern district of Illinois, December term, A. D. 1862.

15 JONATHAN H. RANSOM
vs.
CHESTER K. WILLIAMS, HORATIO WALES. } In ejectment. Bill of exceptions

Be it remembered that on the trial of this cause at said December term, to wit, at Chicago, in the district aforesaid, on the eleventh day of February, A. D. 1863, before the Hon. Thomas Drummond, judge of the said court, the issue joined between the parties in this cause came on to be tried by a jury of the said district for that purpose, duly empanelled, good and lawful men of said district, on which day came then, as well the said plaintiff as the said defendants, by their respective attorneys, and the jurors of the jury aforesaid, empanelled to try the said issue, also came and were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid.

And upon the trial of the issue aforesaid, the counsel for the said plaintiff, to maintain and prove the said issue on his part, gave in evidence, first,
16 a certified copy of a certificate of purchase in the words and figures following, to wit:

GENERAL LAND OFFICE, *December 12th*, 1862.

I, James M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed copy is a true and literal exemplification from the files of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.
[SEAL.]

J. M. EDMUNDS,
Commissioner of the General Land Office.

No. 12576.] LAND OFFICE AT DIXON, ILL'S, *January 27th*, 1842.

It is hereby certified, that in pursuance of law, Horace Chatfield, of Ogle county, State of Illinois, on this day purchased of the register of this
17 office the lot or northwest quarter of section No. twenty, in township No. twenty-three, of range No. eight east, containing one hundred and sixty acres, at the rate of one dollar and twenty-five cents per acre, amounting to two hundred dollars and cents, for which the said Horace Chatfield has made payment in full as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Horace Chatfield shall be entitled to receive a patent for the lot above described, per act of 1838.

JOHN HOGAN, *Register.*

Endorsed: Filed Dec. 16, 1862.

WM. H. BRADLEY, *Clk.*

And upon the trial of the issue aforesaid, the counsel for said plaintiff, further to maintain and prove the said issue on his part, gave in evidence, secondly, a certified copy of a deed in the words and figures following, to wit:

No. 214. Filed Ap. 21, 1842. Rec'd Ap. 23, 1842.

HORACE CHATFIELD and wife
to
SMITH GILBRAITH.

18 This indenture, made this 27th day of January, in the year of our Lord one thousand eight hundred and forty-two, between Horace Chatfield, of Buffalo Grove, Ogle county, and State of Illinois, of the one part, and Smith Gilbraith, of Dixon, Lee county, and State aforesaid, witnesseth: That the said Horace Chatfield, for and in consideration of the sum of seventy-five dollars to him in hand paid by the said Smith Gilbraith, at and before the execution hereof, hath granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release and confirm, unto the said Smith Gilbraith, and to his heirs and assigns, all that certain lot, piece or parcel of land lying and being as follows, to wit: It being a portion of the eastern eighty of the northwest quarter of section No. 20, in township No. 23, of range No. eight east, containing sixty acres, more less, and bounded as follows, to wit: commencing at the northeast corner of said quarter section, thence south one hun-
19 dred and sixty perches, thence west sixty perches, thence north one hundred and sixty perches, thence east sixty perches, to the place of beginning, together with all and singular the rights, liberties, privileges, hereditaments and appurtenances, whatsoever, thereunto belonging or in anywise appertaining, and also all the estate, right, title, interest, property, claim and demand, whatsoever, of him, the said Horace Chatfield and Catherine R. his wife, in, to, or out of the same, to have and to hold the aforesaid messuage or tract of land, hereditaments and premises herein mentioned or intended so to be, unto him, said Smith Gilbraith, his heirs and assigns forever; and the said Horace Chatfield, for himself, his heirs, executors and administrators, unto him the said Smith Gilbraith, and to his heirs and assigns, the said hereditaments and premises hereby granted, or intended so to be, shall and will warrant and forever defend by these presents from and against any and all person or persons whatsoever claiming or to claim the same.

In witness whereof, the said Horace Chatfield and his wife have
20 hereunto set their hands and seals this 27th day of January, A. D. 1842.

HORACE CHATFIELD. [SEAL.]
CATHERINE CHATFIELD. [SEAL.]

Signed, sealed and delivered by the said Horace Chatfield, in presence of us—

L. G. PATRICK.
S. NOBLE.

The word "east" in the description of the boundaries, and the word "west" being first altered, and the word quarter first interlined.

Signed and sealed by the said Catherine R. Chatfield in presence of me—

VIRGIL A. BOGUE.

STATE OF ILLINOIS, *Ogle County, sct.:*

I, Virgil A. Bogue, a justice of the peace of said county, do certify that Horace Chatfield and Catherine R., his wife, whose signatures appear to the foregoing deed, and who are personally known to me to be the persons described in and who executed the same, did severally acknowledge that they had executed the same for the uses and purposes therein mentioned, and the said Catherine R. Chatfield having been by me made acquainted with
21 contents of said deed and examined separate and apart from her said husband, acknowledged that she had executed the same and relinquished her dower to the premises therein conveyed, voluntarily and freely, and without compulsion of her said husband.

Given under my hand and seal this twenty-sixth day of February, A. D. 1842.

VIRGIL A. BOGUE, [SEAL.]
Justice of the Peace of Ogle Co.

STATE OF ILLINOIS, *Ogle County, ss:*

I, Frederick G. Petrie, clerk of the circuit court and ex-officio recorder in and for said county, do certify that the above is a true and full copy of a deed or instrument of writing of record in my said office in book "A" of deeds, at pages 243 and 244, as the same appears by said record.

In testimony whereof, I have hereunto set my hand and affixed the seal
[SEAL.] of said court, at Oregon, in said county, this 8th day of October, A. D. 1862.

F. G. PETRIE, *Clerk,*
22 By M. L. ETTINGER, *Deputy.*

And upon the trial of the issue aforesaid, the counsel for said plaintiff, further to maintain and prove the said issue on his part, gave in evidence, thirdly, a patent from the United States to Horace Chatfield, in the words and figures following, to wit:

Pre-emption certificate, No. 12576.

The United States of America, to all to whom these presents shall come, greeting:

Whereas Horace Chatfield, of Ogle county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Dixon, whereby it appears that full payment has been made by the said Horace Chatfield, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the northwest quarter of section twenty, in township twenty-three, of range eight east, in the district of lands subject to sale at Dixon, Illinois, containing one hundred and sixty acres, ac-
23 cording to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Horace Chatfield: Now, know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Horace Chatfield, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Horace Chatfield, and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of

America, have caused these letters to be made patent and the seal
[SEAL.] of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the first day of May, in the year of
24 our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

By the President.

JOHN TYLER,
By B. TYLER, *Sec'y.*

Recorded vol. 21, page 175.

J. WILLIAMSON,
Recorder of the General Land Office.

And upon the trial of the issue aforesaid, the counsel for said plaintiff, further to maintain and prove the said issue on his part, gave in evidence, fourthly, a certified copy of a judgment record in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Ogle, ss:*

25 At a circuit court begun and holden at the court-house in Oregon city, in and for the county of Ogle, in pursuance of the statute in such case made and provided, on Monday, the tenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine.

Present: the Hon. Dan. Stone, judge of the sixth judicial circuit, presiding in place of the Hon. Thomas Ford, judge of the ninth judicial circuit, Benjamin T. Phelps, clerk, and Normon H. Purple, circuit attorney; Horatio Wales, sheriff.

And theretofore, to wit, on the 18th day of April, A. D. 1839, a præcipe in the words and figures following was filed, to wit:

Præcipe.

Of the June term of the circuit court, A. D. 1839.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES, VIRGIL A. BOGUE, FREDERICK
26 CUSHMAN, OLIVER W. KELLOGG, JOHN D. STEPHENSON, GEORGE CHANDLER, and SMITH GILBRAITH.

STATE OF ILLINOIS, *Ogle County, ss:*

The above is an action of debt on a penal bond; debt, $10,000; damages, $10,000.

The clerk will please issue process of summons against the above named defendants, returnable to the June term of the said circuit court, 1839, to the coroner of Ogle county, or in case there be no coroner, to an elisor, agreeably to the statute, and if any of the said defendants reside in the State, out of Ogle county, then to the sheriff of the county wherein they reside.

BEAUMONT & SKINNER, *P'ff's Att'ys.*

Endorsed: Filed 18th April, 1839.

B. T. PHELPS, *Clerk.*

And afterwards, to wit, on said 18th day of April, A. D. 1839, a bond for costs was filed in said court in the words and figures following, to wit:

Security for costs.

Circuit court of the June term, A. D. 1839.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
27 HORATIO WALES, VIRGIL A. BOGUE, FREDERICK CUSHMAN, OLIVER W. KELLOGG, JOHN D. STEPHENSON, GEORGE CHANDLER, and SMITH GILBRAITH.

STATE OF ILLINOIS, *Ogle County, ss:*

I do hereby enter myself surety for costs in this cause and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this.

Dated this tenth day of April, A. D. 1839.

GEO. A. BEAUMONT.

Endorsed: Filed April 18th, 1839.

B. T. PHELPS, *Clk.*

And afterwards, to wit, on said 18th day of April, A. D. 1839, the clerk of said court issued a summons in the words and figures following, to wit:

Summons.

STATE OF ILLINOIS, *Ogle County:*

The people of the State of Illinois to the coroner of said county, greeting:

We command you that you summon Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, George Chandler, and Smith Gilbraith, if they shall be found in your bailiwick, personally to be and appear before the circuit court for said county on the first day of the next term thereof, to be holden at the court-house in Oregon city
28 on the second Monday in the month of June next, to answer unto the people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, of a plea of debt on a penal bond, to the damage of the said plaintiffs ten thousand dollars, as they saith, and have you then and there this writ, with an endorsement thereon in what manner you executed the same.

Witness B. T. Phelps, clerk of said court, and his private seal, there being no official seal yet provided for said court, at Oregon city, this 18th day of April, A. D. 1839.

[SEAL.] B. T. PHELPS, *Clerk.*

Endorsed, to wit: Ogle county, ss: 17 May, 1839. This day served the within precept on the within named Wales, Bogue, Cushman, Kellogg, and Stephenson, by reading to each of them alone in their hearing, and on 20th May, 1839, I served it on the within named Gilbraith by reading it aloud in his hearing. I have made search for the within named George Chandler, and cannot find him within my precinct.

J. S. LORD, *Coroner.*

Coroner's fees.

Serving summons on 5	$2 50
Returning	62½
Mileage, 70 miles	4 37½
Mileage, 16 miles	1 00
Returning	12½
	8 62½

JOHN S. LORD, *Coroner.*

Filed May 21st, 1839.

B. T. PHELPS, *Clerk.*

29 And afterwards, to wit, on Monday, June 17th, 1839, the following proceedings were had and entered of record in said term of court, to wit:

Court met pursuant to adjournment; present the Hon. Thomas Ford, judge of the ninth judicial circuit.

And afterwards, to wit, on Wednesday, the 19th day of June, A. D. 1839, the same being one of the days of the said June term, A. D. 1839, of said court, the following proceedings were had and entered of record, to wit:

Debt on a penal bond.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES *et al.*

On motion of defendants, it is ordered that this cause be continued at the costs of the said Jonathan H. Ransom.

THOMAS FORD.

And afterwards, to wit, on the 4th day of September, A. D. 1839, the said plaintiffs filed their declaration in said court in the words and figures following, to wit:

Narratio.

Of the September term of the circuit court, A. D. 1839.

30 THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES, VIRGIL A. BOGUE, FREDERICK CUSHMAN, OLIVER W. KELLOGG, JOHN D. STEPHENSON, GEORGE CHANDLER, and SMITH GILBRAITH.

STATE OF ILLINOIS, *Ogle County, ss:*

The people of the State of Illinois, who sue for the use of Jonathan H. Ransom, of the city, county, and State of New York, by Beaumont & Skinner, their attorneys, complain of Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, George Chandler, and Smith Gilbraith, of the county of Ogle, and State of Illinois, as the plaintiffs aver, of a plea that they, the said defendants, render to the said people of the State of Illinois, for the use aforesaid, the sum of ten thousand dollars which they owe and *and* unjustly detain from them.

For that heretofore, to wit, on the thirty-first day of January, in the year of our Lord eighteen hundred and thirty-eight, at the county of Ogle, in the State of Illinois, the said defendants, Horatio Wales as principal, and the said Oliver W. Kellogg, Frederick Cushman, John D. Stephenson, George Chandler, Virgil A. Bogue, and Smith Gilbraith as surety, by their
31 certain bond or writing obligatory, signed with their names and sealed with their seals, and now to the court here shown, the date whereof is the same day and year last aforesaid, acknowledged themselves to be held and firmly bound unto the people of the State of Illinois in the penal sum of ten thousand dollars, good and lawful money of the United States, to the payment of which, well and truly to be made, they thereby bound themselves, each of them, and each of their heirs, executors, and administrators, with and under a certain condition thereunder written, that whereas Horatio Wales was elected sheriff in and for the county of Ogle, and State of Illinois, on the first day of January, then instant, therefore if the said Horatio Wales should and will perform and discharge faithfully all the duties required of him as sheriff of said county of Ogle, then the said bond or writing obligatory should be null and void, otherwise it should be and remain in full force and virtue as by the said writing obligatory and the condition thereof, reference being thereto had, or to an exemplified copy thereof, may more fully and at large appear.

1*st breach.*

And for a breach of the condition of said writing obligatory the said plaintiff, for the use of the said Jonathan H. Ransom, says that the said Horatio Wales did not discharge and perform faithfully all the duties of his
32 office as said sheriff of said Ogle county in this, to wit: That whereas the said Jonathan H. Ransom, at the November term of the municipal court of the city of Chicago, in the State of Illinois, for the year of our Lord one thousand eight hundred and thirty-seven, before the honorable Thomas Ford, judge of the said court, recovered a judgment against one Charles H. Chapman for the sum of eight hundred and forty-eight dollars and thirty-five cents, together with his costs and charges by him about his suit expended, for the non-performance of certain promises and undertakings by said Charles H. Chapman made to the said Jonathan H. Ransom, whereof the said Charles H. Chapman appears convicted, as by the records and proceedings of said cause, still remaining in said court or in the office of the clerk of the circuit court of Cook county, and State of Illinois, will more fully appear.

And afterwards, and while said judgment was in full force and effect and in no manner satisfied and discharged, to wit, on the twelfth day of December, A. D. 1837, the said Jonathan H. Ransom sued out of the said court a certain writ of fieri facias, commonly so called, directed to the high constable of the city of Chicago, by which said writ the said high constable was commanded that of the goods and chattels, lands and tenements of Charles H. Chapman, in his bailiwick, he should cause to be made the sum of
33 eight hundred and forty-eight dollars and thirty-five cents, which the said Jonathan H. Ransom had recovered against him, the said Charles H. Chapman, for his damages, together with interest thereon from the eighth day of November, A. D. 1837.

Also the sum of six dollars and seventy-five cents, which, by the same court, has been adjudged to him for his costs and charges about his said suit expended, and that he, the said high constable, should have those moneys ready ninety days after the date of said writ, and make due return of said writ within ninety days after the date thereof and delivered to the said high constable, which said writ afterwards, on the twelfth day of March, A. D. 1838, was duly returned with the following endorsement thereon:

"No property found whereon to levy. This twelfth day of March, 1838. John Shingley, high constable, per L. Nichols, dep'ty."

Aff't for ca. sa.

And afterwards, to wit, on the seventeenth day of March, in the year 1838, the attorneys of the plaintiff, Jonathan H. Ransom, filed an affidavit closed in the words and figures following, to wit:

"Jonathan H. Ransom *vs.* Charles H. Chapman. Municipal court, city of Chicago. November term, 1837. Judgment of damages, $848 $\frac{35}{100}$ and costs.

"G. A. O. Beaumont, agent for the said plaintiff, being duly sworn, deposes and says that the said plaintiff has recovered a judgment in the muni-
34 cipal court of the city of Chicago for the sum of eight hundred and forty-eight dollars and thirty five cents, besides the costs of suit, and that execution has been issued thereon to the high constable of the city of Chicago, and by him returned no property found whereon to levy; all of which appears by the records of said court. And said deponent further says that said defendant refuses to surrender his estate, lands, tenements, goods, or chattels, for the satisfaction of the said execution, or any execution which may be issued against the property of said Charles H. Chapman, as he is informed and verily believes; and further saith not.

"Sworn to and subscribed before me this 16th day of March, A. D. 1838.

"HENRY BROWN, *Justice of the Peace.*"

Ca. sa.

And in pursuance of said affidavit a writ of execution, commonly called a ca. sa., was issued to the high constable aforesaid, from the court aforesaid, commanding him that he take the body of Charles H. Chapman, if he should be found in his, the said high constable's, bailiwick, and him safely keep, so that he have him to satisfy unto Jonathan H. Ransom the sum of eight hundred and fifty-six dollars forty-seven and a half cents for his damages, costs, and charges, by him lately recovered against him, by the considera-
tion of the said municipal court as aforesaid, whereof the said Charles
35 H. Chapman stood convicted as appeared by the record, and that he have that money to render unto the said Ransom for his damages, costs, and charges aforesaid, within ninety days from the date of said writ, at which time he should make a return of said writ, with an endorsement of his proceeding thereon; which said writ was duly returned on the 23d day of March, 1838, with the following endorsement thereon, to wit:

"Returned at our order. Beaumont & Skinner. Not served by order as above. March 23d, 1838. John Shingley, high constable, per S. J. Lowe, dept. high constable."

2nd ca. sa.

And afterwards, to wit, on the 23d day of March, in the year 1838, the plaintiff's attorneys caused to be issued from said clerk's office of said municipal court of the city of Chicago an alias writ of execution, commonly called a ca. sa., directed to the sheriff of Ogle county, from the people of the State of Illinois, whereby the said sheriff of Ogle county was commanded, as the said high constable had lately been commanded, that he take the body of Charles H. Chapman, if he should be found in his baliwick, and him safely keep, so that he have him, the said Charles Chapman, to satisfy unto Jonathan H. Ransom the sum of eight hundred and fifty-seven dollars and eighty-five cents, which the said Jonathan H. Ransom lately, by the consid-
36 eration of the said municipal court of the said city of Chicago, had recovered against him for his damages, costs, and charges sustained

by reason of the non-performance of certain promises and undertakings lately made, &c., whereof the said Charles H. Chapman stood convicted, as appeared by the said record; and to have that money ready ninety days from the date thereof, to render to the said Jonathan H. Ransom, for his damages, costs, and charges aforesaid, and of his proceedings thereon, to make due return to the office of the clerk of said court within ninety days from the date thereof; which said writ afterwards, and before the return day thereof, was delivered to the said sheriff of Ogle county to execute in due form thereof, as he was therein commanded. And although the said Charles H. Chapman was from that time and afterwards, before the return day of said last-mentioned writ, in the county of Ogle, and in the bailiwick of the said Horatio Wales, sheriff of said county of Ogle, of which the said Horatio Wales had notice, yet the said Horatio Wales, being at that time sheriff of said county of Ogle, contriving to defraud him the said Jonathan H. Ransom, did not, at the county of Ogle aforesaid, take and safely keep the said Charles H. Chapman, being in his, the said sheriff's, bailiwick as aforesaid, and did not have the said Charles H. Chapman to satisfy unto the said Jonathan H. Ransom the said sum of eight hundred and fifty-seven
37 dollars and eighty five cents, nor any part thereof, and did not have that said money ready ninety days from the date of said writ, to render unto the said Jonathan H. Ransom for his said damages, costs, and charges, but wholly neglected and refused so to do; and on the 5th day of July, A. D. 1838, more than ninety days after the date of said writ, falsely returned the said writ of execution: "This 27th day of March, 1838, I arrested the body of Charles H. Chapman, by keeping him in custody as the law directs;" and signed the said return with his own name and in his official capacity, "H. Wales, sh'ff," as by the said writ will more fully appear.

And for assigning a further breach of the said condition of the said writing obligatory, the said plaintiff, according to the form of the statute in such case made and provided, saith the said Horatio Wales has not faithfully performed the duties of his office ——— of Ogle county, in this, to wit, that afterwards, to wit, on the twenty-third day of March, A. D. 1838, a certain other writ of execution, commonly called a ca. sa., was issued in like manner as the said writ last aforesaid was issued as aforesaid to the said sheriff of Ogle county, upon the said judgment, from the said office of the clerk of the said municipal court of the city of Chicago, whereby the said sheriff of said Ogle county was commanded to take the body of the said Charles H Chapman if he, the said Chapman, should be found in the
38 bailiwick of the said sheriff, and him safely to keep, so that the said sheriff should have him, the said Chapman, to satisfy the said Jonathan H. Ransom the sum of eight hundred and fifty-seven dollars and eighty-five cents, which the said Jonathan H. Ransom lately, by the consideration of the said municipal court of the city of Chicago, recovered against him the said Chapman for his the said Ransom's damages, costs, and charges, sustained by reason of the non-performance of certain promises and undertakings lately made, &c., whereof the said Charles H. Chapman was convicted, as appeared by the record of said court, and to have that money ready ninety days from the date of the said last-mentioned writ, to render unto the said Jonathan H Ransom for his damages, costs, and charges last aforesaid, and of his the said sheriff's proceedings thereon with the said writ, to make due return to the said office of the said clerk of said court within ninety days from the date of said writ; which said writ afterwards, and before the return day of the same, was delivered to the said sheriff of Ogle county to be executed as he was thereby commanded.

And although the said Horatio Wales, sheriff of Ogle county, as aforesaid, afterwards, to wit, on the 27th day of March, A. D. 1838, proceeded to exe-

cute the said writ, and arrested and took into custody the said Charles H Chapman, and received from the said Chapman the said money that
39 in the said writ he was commanded to make and to render unto the said Jonathan H. Ransom, yet the said Horatio Wales, being sheriff of Ogle county, as aforesaid, not regarding his duty in that behalf, but contriving to injure and prejudice the said Jonathan H. Ransom, has not paid over the said money so made, as aforesaid, to the said Jonathan H. Ransom, nor to any person for him, nor any part thereof, nor kept the said Charles H Chapman so as to have him to satisfy unto the said Jonathan H. Ransom the said sum of eight hundred and fifty-seven dollars and eighty five cents, but on the same day last aforesaid suffered the said Chapman to escape and go at large at Ogle county, aforesaid; but wholly neglected and refused so to pay over the said money, and so to keep the said Chapman, and falsely returned the said execution on the fifth day of July, A. D. 1838: "This 27th day of March, 1838, I arrested the body of Charles H. Chapman, by keeping him in custody as the law directs," and signed the same in his official capacity, "H. Wales, sh'ff," as by saith writ will more fully appear.

By which said breaches of the condition of the writing obligatory, the said people of the State of Illinois, who sue for the use of the said Jonathan H. Ransom, say that they have been and are injured and sustained damage. By means whereof the said writing obligatory has become forfeited, and, according to the statute in such case made and provided, an action
40 has accrued to the said people of the State of Illinois to recover of the said defendants the said debt of ten thousand dollars above demanded and damages for the use of the said Jonathan H. Ransom.

Yet the said defendants, though often requested, have not paid said sum of money, or any or either of them, or any part thereof, to the said plaintiff, but neglected and refused so to do to the damage of the said plaintiff for the use aforesaid of ten thousand dollars; and therefore the said plaintiff brings suit, &c.

And also for that whereas heretofore, to wit, at the county of Ogle, in the State of Illinois, aforesaid, on the thirty-first day of January, A. D. eighteen hundred and thirty-eight, the said defendants made their certain other bond or writing obligatory, and signed it with their hands, and sealed it with seals, and now here to the court shown, in the words and figures following, to wit:

"Know all men by these presents that I, Horatio Wales, as principal, and O. W. Kellogg, Frederick Cushman, J. D. Stephenson, George Chandler, V. A. Bogue, and Smith Gilbraith, as security, are held and firmly bound unto the people of the State of Illinois in the sum of ten thousand dollars, good and lawful money of the United States, the payment of which well and truly to be made we do bind ourselves, each of us, and each of our heirs, executors, and administrators, firmly by these presents. Signed with our hands and sealed with our seals this thirty-first day of January,
41 in the year of our Lord one thousand eight hundred and thirty-eight.

"The condition of the above bond is such, that whereas Horatio Wales was elected sheriff in and for the county of Ogle and State of Illinois on the first day of January inst.: Now, if the said Horatio Wales shall and does perform and discharge faithfully all the duties required of him as sheriff of said Ogle county, then this bond shall be null and void; otherwise to remain in full force and virtue.

"In witness whereof, we have hereunto set our hands and seals, at Buffalo Grove, this day first above written.

"HORATIO WALES.
"VIRGIL A. BOGUE.
"FREDERICK CUSHMAN.
"OLIVER W. KELLOGG.
"J. D. STEPHENSON.
"GEORGE CHANDLER.
"SMITH GILBRAITH.

"Witness: CHESTER K. WILLIAMS."

All of which by the said bond, or by an exemplified copy thereof, reference being thereto had, will more fully appear.

Yet the said plaintiff says that the said Horatio Wales, contrary to the conditions of the said writing obligatory, did not perform and discharge faithfully all the duties required of him as sheriff of said Ogle county, in this, to wit: That whereas the said Jonathan H. Ransom, at the November term of the municipal court of the city of Chicago, in the State of Illinois, for the year of our Lord one thousand eight hundred and thirty-seven, before the honorable Thomas Ford, judge of said court, recovered a
42 judgment against one Charles H. Chapman for the sum of eight hundred and forty-eight dollars and thirty-five cents, together with his costs and charges by him about his suit expended, which said judgment was rendered in the words and figures following, to wit:

Judgment.

JONATHAN H. RANSOM } Assumpsit.
vs.
CHARLES H. CHAPMAN. }

This day came the plaintiff, by Beaumont & Skinner, his attorneys, and the said defendant, in his own proper person, comes and says he cannot deny the action of the said plaintiff, nor but that he did assume and promise in manner and form, as the said plaintiff has declared, against him, and the plaintiff has sustained damage by reason of the premises to the sum of eight hundred and forty-eight dollars and thirty-five cents, and confesses judgment for that sum with release of all errors. Therefore it is considered by the court that said plaintiff recover of said defendant his damages, aforesaid confessed, together with his costs and charges by him about his suit herein expended, and that he have execution therefor.

Which day was the ninth day of November, in the year of our Lord one thousand eight hundred and thirty-seven, the same being one of the days of the November term of said court, as this plaintiff avers, and which, by the record of said judgment, or an exemplified copy thereof, will more
43 fully appear.

And afterwards, to wit, on the twelfth day of December, in the year last aforesaid, pursuant to the judgment entered in said cause, a writ of execution, commonly called a fieri facias, was issued from the office of the clerk of said court, directed to the high constable of the city of Chicago, which is closed in the words and figures following, to wit:

STATE OF ILLINOIS, *Cook County, City of Chicago:*

The people of the State of Illinois to the high constable of the city of Chicago, greeting:

We command you that of the goods and chattels, lands and tenements, of Charles H. Chapman, in your bailiwick, you cause to be made the sum of eight hundred and forty-eight dollars and thirty-five cents, which Jonathan

H. Ransom lately, before the municipal court of the city of Chicago, recovered against him for his damages, with interest thereon from the eighth day of November, A. D. 1837; also the sum of six dollars and seventy-five cents, which by the same court was adjudged to him for his costs and charges about his suit in this behalf expended, whereof the said Chapman is convicted, as appears to us of record; and that you have those moneys ready ninety days after date hereof to render unto the said Ransom for damages, costs, &c., aforesaid, and make due return of this writ within ninety
44 days from the date hereof.

Witness the honorable Thomas Ford, judge of our said court, at Chicago, this twentieth day of December, A. D. 1837.

[L. S.] H. L. RUCKER, *Clerk.*

And afterwards, to wit, on the twelfth day of March, A. D. 1838, said writ was duly returned with the following endorsment thereon, to wit:

"No property found whereon to levy, this twelfth day of March, 1838.

"JOHN SHINGLEY, *High C.*

"Per L. NICHOLS, *Dep't.*"

And afterwards, to wit, on the seventeenth day of March, in the year 1838, the plaintiff's attorneys filed an affidavit closed in the words and figures following, to wit:

Aff't.

Municipal court, city of Chicago. Judgment November term, 1837. Damages, $848 $\frac{35}{100}$ and costs.

JONATHAN H. RANSOM
vs.
CHARLES H. CHAPMAN.

G. A. O. Beaumont, agent for the said plaintiff, being duly sworn, deposes and says that the said plaintiff has recovered a judgment in the municipal court of the city of Chicago for the sum of eight hundred and forty-eight dollars and thirty-five cents, besides the costs of suit, and that execution has been issued thereon to the high constable of the city of Chicago, and by him returned no property found whereon to levy, all which appears by the records of said court; and said deponent further says that said defendant refuses to surrender his estate, lands, tenements, goods or chattels, for the sat-
45 isfaction of the said execution, or any execution which may be issued against the property of said Charles H. Chapman, as he is informed and verily believes; and further saith not.

G. A. O. BEAUMONT.

Sworn to and subscribed before me this 16th day of March, A. D. 1838.

HENRY BROWN, *Justice of the Peace.*

And in pursuance of said affidavit a writ of execution, commonly called a ca. sa., was issued to the said high constable of the city of Chicago, closed in the words and figures following, to wit:

Ca. sa.

STATE OF ILLINOIS, *County of Cook, City of Chicago:*

The people of the State of Illinois to the high constable of said city, greeting:

We command you that you take the body of Charles H. Chapman, if he shall be found in your bailiwick, and him safely keep, so that you have him to satisfy unto Jonathan H. Ransom the sum of eight hundred and fifty-six dollars forty-seven and a half cents, for his damages, costs and charges, by

him lately recovered against him by the consideration of our municipal court of the said city of Chicago, at the November term thereof, anno Domini, 1837, whereof the said Charles H. Chapman is convicted, as appears to us of record, and have you that money to render unto the said Ransom for his damages, costs and charges, aforesaid, within ninety days from the
46 date hereof, in which period of time you shall make return to our said court of this writ, with an endorsement of your proceedings thereon.

Witness the honorable Thomas Ford, judge of our said court, and the seal thereof, at the city of Chicago, aforesaid, this 17th day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

[SEAL.]

H. L. RUCKER, *Clerk.*

Which said writ was duly returned on the 23d day of March, 1838, with the following endorsment, to wit: "Returned at our order. Beaumont & Skinner. Not served by order as above. March 23d, 1838. Jno. Shingley, high const., per L. J. Lowe, dep't. high constable."

And afterwards, to wit, on the 23d day of March, in the year 1838, the plaintiff's attorneys caused to be issued from said clerk's office an alias writ of execution, commonly called a ca. sa., directed to the sheriff of Ogle county, closed in the words and figures following, to wit:

Alias ca. sa.

THE STATE OF ILLINOIS, *County of Cook, City of Chicago:*

The people of the State of Illinois to the sheriff of Ogle county, greeting:

We command you, as we lately commanded the high constable of our said city, that you take the body of Charles H. Chapman, if he shall be found in your bailiwick, and him safely keep, so that you have him to satisfy unto Jonathan H. Ransom lately, by the consideration of the municipal
47 court of the said city of Chicago, recovered against him for his damages, costs and charges, sustained by reason of the non-performance of certain promises and undertakings lately made, &c., whereof the said Charles H. Chapman is convicted, as appears to us of record; and have you that money ready ninety days from the date hereof to render to the said Jonathan H. Ransom for his damages, costs and charges, aforesaid, and of your proceedings hereon make due return to the office of the clerk of said court within ninety days.

Witness the Hon. Thomas Ford, judge of our said court, and the seal thereof, at Chicago, this 23d day of March, A. D. 1838.

[SEAL.]

H. L. RUCKER, *Clerk.*

All of which, by the record of the said municipal court of the city of Chicago, or by an exemplified copy thereof, reference being thereto had, will appear, and before the return day of said writ the same was delivered to the said sheriff of Ogle county to execute, as he was therein commanded.

And although the said Charles H. Chapman was from that time and afterwards, before the return day of said last-mentioned writ, in the county of Ogle, and the bailiwick of the said Horatio Wales, sheriff of said county of Ogle, of which the said sheriff had notice, yet the said defendant, Horatio Wales, being at that time sheriff of said county of Ogle, contriving to injure and defraud the said Jonathan H. Ransom, did not, at the county of
48 Ogle aforesaid, take and safely keep the said Charles H. Chapman, being in his, the said sheriff's bailiwick, as aforesaid, and did not have the said Charles H. Chapman to satisfy unto the said Jonathan H. Ransom the said sum of eight hundred and fifty-seven dollars and eighty-five cents, nor "and" part thereof, and did not have the said money ready

ninety days from the date of the said writ to render unto the said Jonathan H. Ransom for his said damages, costs and charges, but wholly neglected and refused so to do; and on the fifth day of July, A. D. 1838, falsely returned the said writ, with the following endorsment upon the same, to wit: "This 27th day of March, 1838, I arrested the body of Charles H. Chapman, by keeping him in custody as the law directs," and signed the same in his official character, H. Wales, sh'ff, as by the said writ, or an exemplified copy of the same, and this endorsement, will more fully appear.

And for assigning a further breach of the said condition of the said bond or writing obligatory, the said plaintiff, according to the form of the statute in such case made and provided, saith that the said Horatio Wales has not faithfully performed the duties of his office as sheriff of Ogle county, in this, to wit: that the said defendant Wales did not return the said writ of execution, commonly called a ca. sa., above in the former breach last men-
49 tioned, directed as aforesaid to the said sheriff of Ogle county, within ninety days from the date thereof, to the clerk of the said municipal court of the city of Chicago, as he was commanded in said writ, as by the said writ, reference being thereto had, will more fully to the court appear.

And for assigning a further breach of *of* the said condition of the said writing obligatory, the said plaintiff, according to the form of the statute in such case made and provided, saith that the said Horatio Wales has not faithfully performed the duties of his said office of sheriff of Ogle county, in this, to wit: That afterwards, on the 23d day of March, A. D. 1838, a certain other writ of execution, commonly called a ca. sa., was issued out of the office of the clerk of the municipal court of the city of Chicago, directed in like manner as that in the last breach mentioned, to the said sheriff of Ogle county, and in like words and figures as the said writ, and containing the same commands, and the said sheriff, in every respect, as the said writ in the last breach mentioned, and the same was, before the return day thereof, delivered to the said sheriff of Ogle county to execute, as he was therein commanded. Whereupon the said sheriff of Ogle county, the said defendant, Horatio Wales, proceeded to take the body of the said Charles H. Chapman, as he was therein commanded, and did arrest the body of the said Chapman; and on the same day, or shortly after, suffered and permitted the said
50 Chapman to escape and go at large, and did not keep the said Chapman to satisfy unto the said Jonathan H. Ransom the said sum of eight hundred and fifty-seven dollars and eighty-five cents, nor did he, the said Horatio Wales, have ready that money ninety days from the date of said writ to render to the said Ransom for his damages, costs, and charges aforesaid, as he was in the said writ commanded; and not regarding his duty in that behalf, but contriving to injure and prejudice the said Jonathan H. Ransom, would not keep the body of the said Charles H. Chapman, and falsely returned said execution: "This 27th day of March, 1838, I arrested the body of Charles H. Chapman by keeping him in custody, as the law directs," and signed the said return in his official capacity, "H. Wales, sh'ff," on the fifth day of July, 1838, as by said writ, reference being thereto had, will more fully to the court appear.

And for a further breach of the said condition of the said writing obligatory, the said plaintiff, according to the statute made and provided, saith that the said Horatio Wales has not faithfully performed the duties of his said office of sheriff of Ogle county, in this, to wit: That afterwards, on the 23d day of March, A. D. 1838, a certain other writ of execution, commonly called a ca. sa., was issued
51 out of the office of the clerk of the municipal court of the city of Chicago, directed in like manner as that in the last breach mentioned to the said sheriff of Ogle county, and in like words and figures, commanding the said sheriff as the said last-mentioned writ commanded; and the same was,

before the return day thereof, delivered to the said sheriff of Ogle county to execute as he was therein commanded. Wherefore the said Horatio Wales, contriving to injure and prejudice the said Jonathan H. Ransom, and not regarding his duty in that behalf, on the fifth day of July, A. D. 1838, and more than ninety days after the date of, and after he received said writ, returned the same to the office of the said clerk of the said municipal —— with the following false endorsement thereon: "This 27th day of March, 1838, I arrested the body of Charles H. Chapman, by keeping him in custody, as the law directs.—H. Wales, sh'ff," as by the said writ appears, and did not keep the said Chapman to satisfy unto the said Ransom the said sum of eight hundred and fifty-seven dollars and eighty-five cents, nor did he have ready that money ninety days (or any other time) from the date of said writ to render to the said Ransom, as commanded aforesaid.

By which said breaches of the condition of the said writing obligatory, the said people of the State of Illinois say that they and the said
52 Jonathan H. Ransom have been and are injured and have sustained damage.

By means whereof the said writing obligatory has become forfeited, and, according to the statute in such case made and provided, an action has accrued to the said people of the State of Illinois to recover of the said defendants the said debt of ten thousand dollars above demanded, and damages, for the use of the said Jonathan H. Ransom.

Yet the said defendants, though often requested, have not paid said sums of money, or any part thereof, or any, or either of them, to the said plaintiff, but neglect and refuse so to do, to the damage of the said plaintiff, for the use aforesaid, of ten thousand dollars; and therefore he brings suit, &c.

BEAUMONT & SKINNER, *Pl'ff's Att'ys.*

Copy of the instrument declared on.

Know all men by these presents, that I, Horatio Wales, as principal, and O. W. Kellogg, Frederick Cushman, J. D. Stephenson, George Chandler, V. A. Bogue, and Smith Gilbraith, as security, are held and firmly bound unto the people of the State of Illinois in the sum of ten thousand dollars, good and lawful money of the United States, the payment of which well
53 and —— to be made we do bind ourselves, each of us, and each of our heirs, executors, and administrators, firmly by these presents. Signed with our hands and sealed with our seals this thirty-first day of January, in the year of our Lord one thousand eight hundred and thirty-eight.

The condition of the above bond is such, that whereas Horatio Wales was elected sheriff in and for the county of Ogle and State of Illinois on the first day of January inst.: Now, if the said Horatio Wales shall and does perform and discharge faithfully all the duties required of him as sheriff of said Ogle county, then this said bond shall be null and void; otherwise to remain in full force and virtue.

In witness whereof, we have hereunto set our hands and seals, at Buffalo Grove, this day first above written.

HORATIO WALES. [SEAL.]
VIRGIL A. BOGUE. [SEAL.]
FREDERICK CUSHMAN. [SEAL.]
OLIVER W. KELLOGG. [SEAL.]
J. D. STEPHENSON. [SEAL.]
GEORGE CHANDLER. [SEAL.]
SMITH GILBRAITH. [SEAL.]

Witness: CHESTER K. WILLIAMS.

Endorsed: Filed Sept. 4th, 1839. B. T. PHELPS, *Clerk.*

54 And afterwards, to wit, on Tuesday, the 17th day of September, A. D. 1839, the same being one of the days of the September term, A. D. 1839, of said court, the following proceedings were had and entered of record, to wit:

Debt on a penal bond.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES *et al.* } A. 138.

On motion of plaintiff's attorney, it is ordered by the court that this cause be continued until the next term of this court.

And afterwards, to wit, on Friday, June 12th, 1840, the same being one of the days of the June term, 1840, of said court, the following proceedings were had and entered of record, to wit:

Debt on a penal bond.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. "RHINES,"
vs.
HORATIO WALES *et al.* } A. 185.

By agreement of the parties, it is ordered by the court that this cause be continued until the next term of this court.

55 And afterwards, to wit, on Wednesday, September 23d, 1840, the same being one of the days of the September term, 1840, of said court, the following proceedings were had and entered of record, to wit:

Debt on a penal bond.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES *et al.* } A. 247.

This day came the parties, by their attorneys, and the defendant filed his affidavit and enters his motion for a continuance, after hearing the arguments of counsel; and being sufficiently advised and informed thereon, it is ordered by the court that said motion be sustained, and this cause is continued at the def't's costs.

And afterwards, to wit, on March 25th, 1841, a plea in the words and figures following was filed in said court, to wit:

Ogle county circuit court, March T., 1841.

PEOPLE OF THE STATE OF ILLINOIS, for the use of JONATHAN H. RANSOM,
vs.
HORATIO WALES, VIRGIL A. BOGUE, FREDERICK CUSHMAN, OLIVER W. KELLOGG, JOHN D. STEPHENSON, GEORGE CHANDLER, and SMITH GILBRAITH.

56 Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, by Fuller, their

attorney, come and defend the wrong and injury, &c., when, &c., and for a 2d plea say that the plaintiffs, their action aforesaid, ought not to have and maintain against them, because they say that said Wales has, from time to time, and at all times, after the making of said writing obligatory, and said condition thereof, well and faithfully observed, performed, kept, and fulfilled all and singular the articles, conditions, covenants, agreements, and obligations in the said condition of said writing obligatory contained, specified, and mentioned, in all things and in all respects, on his part to be observed, performed, and kept, according to the true tenor, intent, and effect and meaning of the said condition of s'd writing obligatory; and this the said Wales, Bogue, Cushman, Kellogg, and Stevenson, and Gilbraith are ready to verify.

Wherefore they pray judgment of the pl'ffs shall have and maintain their their said action, and for costs.

By their att'y, W. W. FULLER.

The d'f'ts give notice that, under this issue, they shall give in evidence the proceedings before the probate justice of the county *of the county* of Ogle, to wit, after said writs of execution is alleged to have been delivered to s'd Wales, whereby said Chapman was duly released and discharged from arrest by virtue of the writs of execution in the p't'ff's declaration
57 mentioned, according to the laws of this State.

W. W. FULLER, *Att'y.*

And the said plaintiff, by Beaumont and Skinner, now comes and excepts to the defendants offering any evidence, other than is authorized by their pleas, and says that the above notice for that the same is too general; that the same does not show what and proceedings were had before said probate justice, or any proceedings or matters that can bar the plaintiff's action, and that the same is in other respects insufficient.

Beaumont & Skinner, p't'ff's att'ys, and said Wales, Bogue, Cushman, Kellogg, and Stevenson, and Smith Gilbraith, come and plead and say that said writing obligatory, in the p't'ff's declaration mentioned, is not their deed in manner and form as p'tff's have alleged, and this they pray may be inquired of by the country.

By W. W. FULLER, *their Att'y.*

And the p't'ff does the like.

BEAUMONT & SKINNER, *P't'ff's Att'y.*

Endorsed: Filed March 25th, 1841.

B. T. PHELPS, *Clerk.*

And afterwards, to wit, on 26th March, 1841, the following replication was filed in said court, being in the words and figures following, to wit:

58 THE PEOPLE OF THE STATE OF ILLINOIS, for the use of JONATHAN H. RANSOM,
vs.
HORATIO WALES *et al.*

And the said plaintiffs, by Beaumont & Skinner, his attorneys, comes, replies, and says, preclude now, &c., because he says that the said defendant, Wales, has not from time to time, and at all time, after making the said writing obligatory, and said condition thereof, well and faithfully observed, performed, kept, and fulfilled all and singular the articles, conditions, covenants, agreements, and obligations in the said condition of said writing obligatory contained and specified and mentioned in all things and in all respects on his part *on his part* to be observed and performed and kept ac-

cording to the tenor, intent, and effect and meaning of the said condition of said writing obligatory, as in the said defendant's plea alleged; and of this he puts himself upon the country.

BEAUMONT & SKINNER, *P'tff's Att'ys.*

Endorsed: Filed March 26th, 1841.

B. T. PHELPS, *Clerk.*

And afterwards, to wit, on said 26th day of March, 1841, the following motion and objections were filed in said court, to wit:

59 And the said plaintiff comes and moves that the notice filed in this cause by the said defendants be stricken out for the following reasons:

1st. That no notice can be given, except under the general issue.

2nd. That the defendants cannot give notice of special matter, and also plead special pleas in the same cause.

3rd. That the matters set out in the said notice are immaterial and constitute no defence to the plaintiff's action, and for other good and sufficient reasons apparent in said notice.

BEAUMONT & SKINNER, *P'tff's Att'ys.*

Endorsed, to wit: People, use of Ransom vs. Wales *et al.* Filed March 26th 1841.

B. T. PHELPS, *Clk.*

And afterwards, to wit, on Saturday, the 27th day of March, A. D. 1841, the same being one of the days of the March term, 1841, of said court, the following proceedings were had and entered of record, to wit:

Debt on a penal bond.—Judgment, March 27, 1841.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES, VIRGIL A. BOGUE, FREDERICK CUSHMAN, OLIVER W. KELLOGG, JOHN D. STEPHENSON, and SMITH GILBRAITH, impleaded with GEORGE CHANDLER. } A, 303.

60 This day come the parties, by their attorneys, and issue being joined, whereupon come the jurors of a jury, to wit: John Forster, Irvin Palmer, Nicholas Shaver, Thomas O. Youngs, Pearson Shoemaker, Nathan C. Tyrrell, George D. Johnston, A. E. Herd, L. O. Bryan, Samuel S. Foultz, Ahira Sanford, and Samuel Wilson, who being duly elected, tried and sworn well and truly to try the issues joined, and a true verdict render, according to evidence, after hearing the evidence and arguments of counsel, and being advised by the court retired to consider of their verdict, after a short absence presented the following verdict, to wit:

We, of the jury, do find the issues in this cause in favor of the plaintiffs; and the said defendants do owe to the plaintiffs the sum of ten thousand dollars, the debt in the declaration mentioned, and do assess the damages sustained by Jonathan H. Ransom, by reason of the breaches assigned in the declaration to the sum of one thousand and thirty-two dollars and twenty-six cents. Wherefore it is considered by the court that the said plaintiffs do recover of the said defendants the said sum of ten thousand dollars, their debt aforesaid, and it is ordered by the court that the said plaintiffs have execution against the said defendants for the said sum of one thousand and thirty-two dollars and twenty-six cents, their damages in form aforesaid assessed, together with their costs of suit, to be taxed for the use of the said Jonathan H. Ransom.

61 And afterwards, to wit, on the 22d day of November, A. D. 1841, the clerk of said court issued a writ of execution on said judgment in the words and figures following, to wit:

1st ex., dated Nov. 22, '41.

STATE OF ILLINOIS, *Ogle county, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the goods and chattels, lands and tenements, of Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) which shall be found in your county, you cause to be made the sum of one thousand and thirty-two dollars and twenty-six cents, which the people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, hath lately in the circuit court of said county recovered against them for his damages, by reason of certain trespasses by them, the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) to the said people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, lately done, and also the further sum of fifty-nine dollars and fifty cents, which was adjudged to him for his costs and charges in that behalf
62 expended, whereof the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) is convicted as appears to us of record; and have that money ready in ninety days from the date hereof, to render to the said people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, for his damages and costs aforesaid; hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness B. T. Phelps, clerk of said court, and the seal thereof, at Oregon city, this twenty-second day of November, A. D. 1841.

[SEAL.] B. T. PHELPS, *Clerk.*

Endorsed: The sheriff will collect interest on the within fi. fa. from the twenty-seventh March, A. D. 1841, at the rate of six per cent.

B. T. PHELPS, *Clerk.*

November the 24th, 1841, 3 o'cl'k p. m., received this writ for collection.

W. T. WARD, *Sheriff of Ogle Co.*

Sheriff's fees, services on six, $3 00; mileage, $4 06.

I have made search and can find no property on which to levy. Feb'y 5th, 1842.

W. T. WARD, *Sheriff.*

Filed Feb. 9, 1842.

B. T. PHELPS, *Clerk.*

63 And afterwards, to wit, on the 5th day of May, A. D. 1842, the clerk of said court issued an alias execution on said judgment in the words and figures following, to wit:

2d execution, May 5, '42.

STATE OF ILLINOIS, *Ogle County, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you, as we have heretofore commanded you, that of the goods and chattels, lands and tenements, of Horatio Wales, Virgil A. Bogue,

Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) which shall be found in your county, you cause to be made the sum of one thousand and thirty-two dollars and twenty-six cents, which the people of the State of Illinois, who sue for the use of and benefit of Jonathan H. Ransom, hath lately in the circuit court of said county recovered against them for his damages, by reason of certain trespasses by them, the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) to the said people of State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, lately done, and also the further sum of sixty dollars and thirty-seven
64 and a half cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) is convicted, as appears to us of record, and have that money ready in ninety days from the date hereof to render to the said people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, for his damages and costs aforesaid. Hereof fail not and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness B. T. Phelps, clerk of said court, and the seal thereof, at Oregon city, 5th day of May, A. D. 1842.

[SEAL.] B. T. PHELPS, *Clerk.*

Endorsed, to wit: The sheriff will collect interest, May the 5th, 1842, one o'clock p. m. Received this writ for collection. W. T. Ward, sheriff. No property found on which to levy. Service on six, $3 00; mileage, $4 06¼. August 3d, 1842.

W. T. WARD, *Sheriff.*

Filed August 4th, 1842.

B. T. PHELPS, *Clerk.*

And afterwards, to wit, on the 24th day of August, A. D. 1842, the clerk of said court issued a pleurius execution on said judgment in the words and figures following, to wit:

65 *3rd execution, Aug.* 24, 1842.

STATE OF ILLINOIS, *Ogle County, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you, as we have heretofore oftentimes commanded you, that of the goods and chattels, lands and tenements, of Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) which shall be found in your county, you cause to be made the sum of one thousand and thirty-two dollars and twenty-six cents, which the people of the State of Illinois, who sue for the benefit and use of Jonathan H. Ransom, hath lately in the circuit court of said county recovered against them for his damages, by reason of certain trespasses by them, the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,(to the said people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, lately done, and also the further sum of sixty-one dollars and twenty-five cents, which were adjudged to him for his costs and charges in that behalf expended, whereof the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver

W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with
66 George Chandler,) is convicted, as it appears to us of record, and have that money ready in ninety days from the date hereof to render to the said people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, for his damages and costs aforesaid. Hereof fail not, and make return of this writ in ninety days from the date hereof, with an endorsement thereon as to the manner in which you executed the same.

Witness Benjamin T. Phelps, clerk of said court, and the seal thereof, at Oregon city, this 24th day of August, A. D. 1842.

[SEAL.] BENJAMIN T. PHELPS, *Clerk.*

Endorsed, to wit: The sheriff will collect interest on the within fi. fa. from the 27th day of March, A. D. 1841.

B. T. PHELPS, *Clk.*

November 19th, 1842.—I have made diligent search, and can find no property on which to levy.

W. T. WARD, *Sheriff.*

Sheriff's fees on this writ is, service on six, $3 00; mileage, $4 06; return, 12½.

Filed Nov. 21st, 1842.

B. T. PHELPS, *Clk.*

And afterwards, to wit, on the 2nd October, A. D. 1844, the clerk of said court issued a writ of execution in the words and figures following, to wit:

4th ex., Oct. 2nd, 1844.

The people of the State of Illinois to the sheriff of Ogle county, greeting:

67 Whereas, by the consideration of our circuit court held at Oregon, in and for the county of Ogle, on the 27th day of March, in the year of our Lord one thousand eight hundred and forty-one, the people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, recovered judgment against Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, (impleaded with George Chandler,) for the sum of one thousand and thirty-two dollars and twenty-six cents damages, which the said people, for the use of Jonathan H. Ransom, had sustained by the reason of the non-performance of certain promises made to him by the said Horatio Wales *et al.*, and also the further sum of sixty-three dollars and thirty-seven of suit, as of record.

We therefore command you that, of the goods and chattels, lands and tenements of the said Horatio Wales *et al.*, you cause to be made the aforesaid sums of money, together with interest on said judgment at the rate of six per centum per annum, from the time of recovering the same, as aforesaid, until paid; and that you have the same ready, as soon as may be, to render unto the said Jonathan H. Ransom, according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

Witness Henry Roberts, clerk of our said court, and the seal
68 thereof, at Oregon, this 2d day of October, in the year of our Lord one thousand eight hundred and forty-four.

[SEAL.] HENRY ROBERTS, *Clerk.*

Endorsed, to wit: Received Oct. 3d, 1844, 10 o'cl'k a. m. Returned Oct. 22d, 1844, by written order on file from the att'y of plaintiff.

C. BURR, *Act. Sheriff*

And afterwards, to wit, on the 8th day of January, 1845, the clerk of said court issued a writ of execution on said judgment, in the words and figures following, to wit:

5th ex.—Jan. 18th, '45.

The people of the State of Illinois to the sheriff of Ogle county, greeting:

Whereas by the consideration of our circuit court, held at Oregon, in and for the county of Ogle, on the 27th day of March, in the year of our Lord one thousand eight hundred and forty-one, the people, who sue for the use and benefit of Jonathan H. Ransom, recovered judgment against Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, impleaded with George Chandler, for the sum of one thousand and thirty-two dollars and $\frac{26}{100}$ damages, which the said Jonathan H. Ransom had sustained by the reason of the non-performance of certain promises made to him by the said Horatio Wales *et al.*, and also for the further sum of fifty-eight dollars and seventy-five cents costs of suit, as appears of record:

69 We therefore command you, that of the goods and chattels, lands and tenements of the said Horatio Wales and others, you cause to be made the aforesaid sums of money, together with interest on said judgment, at the rate of six per centum per annum, from the time of recovering the same, as aforesaid, until paid; and that you have the same ready, as soon as may be, to render unto the said Jonathan Ransom, according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

Witness Henry Roberts, clerk of our said court, and the seal thereof, at Oregon, this 8th day of January, in the year of our Lord one thousand eight hundred and forty-five.

[SEAL.] HENRY ROBERTS, *Clerk.*

Endorsed, to wit: Received January 9th, 1845, 3 o'cl'k p. m.

By virtue of the within *fi. fa.*, I have levied upon 1 chestnut mare, 1 span of colts—1 sorrel and the other a bay; 2 cows, 1 heifer, 1 plough, 1 cultivator, 1 set of harness, 6 stacks of wheat, and one hundred bush. corn, on the 15th day of January, 1845, and 1 lumber wagon.

C. BURR, *Act. Sheriff.*

The within property was replevied out of my hands.

C. BURR, *Act. Sheriff.*

Filed April 8th, 1845.

HENRY ROBERTS, *Clerk.*

70 [And thereupon the counsel for the said defendant stated to the court and jury that he should not claim or insist that the last foregoing execution was satisfied, either in whole or in part, by reason of the levy thereon recited, and that he would waive all questions as to the effect of said levy, and treat and consider said execution as though no levy had been made thereunder.]

The above, contained within brackets, is no part of the original record, but is a part of the bill of exceptions, and by request of the attorney here inserted.

WM. H. BRADLEY, *Clerk.*

71 *5th fi. fa.*

And afterwards, to wit, on the 28th day of May, 1847, the clerk of said court issued a pleurius writ of execution on said judgment, in the words and figures following, to wit:

The people of the State of Illinois to the sheriff of Ogle county, greeting:

Whereas by the consideration of our circuit court, held at Oregon, in and for the county of Ogle, on the 27th day of March, in the year of our Lord one thousand eight hundred and forty-one, the people, who sue for the use and benefit of Jonathan H. Ransom, recovered judgment against Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stevenson, and Smith Gilbraith, impleaded with George Chandler, for the sum *on* one thousand thirty-two dollars and twenty-six cents damages, which the said Jonathan H. Ransom had sustained by the reason of the non-performance of certain promises made to him by the said Horatio Wales and others, and also for the further sum of sixty dollars and twelve and a half cents costs of suit, as appears of record:

We therefore command you, as we have often done heretofore, that of the goods and chattels, lands and tenements of the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, John D. Stevenson, and Smith Gilbraith you cause to be made the aforesaid sums of money, together with interest
72 on said judgment, at the rate of six per centum per annum, from the time of recovering the same, as aforesaid, until paid; and that you have the same ready, as soon as may be, to render unto the said Jonathan H. Ransom, according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

Witness Henry Roberts, clerk of our said court, and the seal thereof, at Oregon, this 28th day of May, in the year of our Lord one thousand eight hundred and forty-seven.

[SEAL.] HENRY ROBERTS, *Cl'k.*

Endorsed, to wit: Rec'd this execution May 29th, 1847, at 11 o'clock a. m.
E. W. DUTCHER, *Sheriff.*

By virtue of the within execution to me directed, I have this day levied on the following tracts of land, to wit: East half of southwest quarter of section seventeen, (17,) town. twenty-three, (23,) range eight (8) east, of the fourth principal meridian, containing eighty acres, and also northeast quarter of section twenty, town. and range above mentioned, one hundred and sixty acres. 1847.

E. W. DUTCHER, *Sheriff.*

By virtue of the execution, I have levied, in addition to the above, the following described parcels of land, to wit, described as follows: Commencing at the northeast corner of the northwest quarter of section No. twenty, town. and range above mentioned; thence south one hundred and sixty
73 perch; thence west sixty perch; thence north one hundred and sixty perch; thence east 60 perch to the place of beginning, containing sixty acres.

E. W. DUTCHER, *Sheriff.*

June 7th, 1847.

By virtue of the within execution, I did, on the 29th day of May, levy on the following described parcels of land, to wit: The east half of the south-

west quarter of section seventeen, in town. twenty-three, range eight east, of the fourth principal meridian, containing eighty acres, and Edward F. Dutcher bid the sum of six hundred and twenty-one dollars therefor, and said land was sold to him this August 10th, 1847.

Also, the northeast quarter of section twenty, town. and range above mentioned. After advertising the same, according to law, I did, on the 10th day of August, 1847, sell the same at public sale, and E. F. Dutcher, for the use of Jonathan H. Ransom, bid the sum of four hundred dollars; therefore said land was struck off to him, he being the highest and best bidder therefor, all the following described piece or parcel of land described as follows: Commencing at the northeast corner of the northwest quarter of section No. 20, town. and range above mentioned; thence south one hundred and sixty perch; thence west sixty perch; thence north one hundred and sixty perch; thence east sixty perch, to the place of beginning, containing sixty acres; and after advertising the same, according to law, I did, on the 10th day of August, expose to public same for sale, and E. F. Dutcher, for
74 the use of Jonathan H. Ransom, bid the *the* sum of four *four* hundred dollars therefor, and he being the highest and best bidder therefor, said land was sold to him, the said E. F. Dutcher, for the use and benefit of said Jona. H. Ransom.

E. W. DUTCHER, *Sheriff.*

Oregon, August 10th, 1847.

And afterwards, to wit, on Friday, the 24th day of September, A. D. 1847, then and there being present the Hon. John D. Caton, judge, B. C. Cook, State's attorney, Henry Roberts, cl'k, and E. W. Dutcher, sheriff, the following, among other proceedings, were had and entered of record, to wit:

Motion to quash execution and set aside sale under the same.

THE PEOPLE OF THE STATE OF ILLINOIS, who sue for the use and benefit of JONATHAN H. RANSOM,
vs.
HORATIO WALES, VIRGIL A. BOGUE, FREDERICK CUSHMAN, OLIVER W. KELLOGG, JOHN D. STEVENSON and SMITH GILBRAITH, impleaded with GEORGE CHANDLER.

On this day came the said plaintiff, by H. A. Mix, their attorney, and moves the court that the execution issued in the above entitled suit, on which a sale was made on or about the 10th day of August, 1847, be quashed, and the sale thereon and all subsequent proceedings had in the premises be annulled and vacated. And the said defendants appearing by their counsel, Fuller, Peters, Noble, and Miller, and the court being fully advised
75 in the premises, it is ordered by the court that said execution be quashed, and the sale and all subsequent proceedings had under said execution be annulled and vacated, and set aside, and another execution issued on said judgment.

And afterwards, to wit, on the 25th day of November, A. D. 1847, the clerk of said court issued a writ of execution on said judgment in the words and figures following, to wit:

STATE OF ILLINOIS, *Ogle County, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you, that of the goods and chattels, lands and tenements, of Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stevenson, and of the lands and tenements of Smith Gilbraith, now

deceased, impleaded with George Chandler, in your county, you cause to be made the sum of ten thousand dollars, which, by the judgment of our circuit court, within and for said county of Ogle, at the March term thereof, A. D. 1841, the people of the State of Illinois, who sue for the use and benefit of Jonathan H. Ransom, recovered against the said Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson, and Smith Gilbraith, impleaded with George Chandler, in a certain action
76 of debt to be satisfied upon the payment, ten hundred and thirty-two dollars and twenty-six cents, as appears to us of record, and have that money ready in ninety days from the date hereof to render to the said Jonathan H. Ransom; and also the further sum of sixty-three dollars and eighty-seven cents costs, for his damages and costs aforesaid. Hereof fail not, and of this writ and your service make due return within ninety days from this date.

Witness Henry Roberts, clerk of our said court, at Oregon, this 25th day of November, A. D. 1847.

[SEAL.] HENRY ROBERTS, *Clerk.*

Endorsed, to wit: Received this execution this 3d day of December, 1847, at one o'clock p. m.

E. W. DUTCHER,
Sheriff of Ogle County.

This execution is to be satisfied upon the payment of ten hundred and thirty-two dollars and twenty-six cents, and sixty-three dollars and eighty-seven cents costs, and interest thereon from the 27th March, 1841.

HENRY ROBERTS, *Clk.*

By virtue of the within execution, I have this day levied on the following described tracts of land, taken as the property of the defendants, this February 4th, 1848, to wit: The east half of the southwest quarter of section seventeen, in town. twenty-three, of range eight east, of the fourth principal meridian; also the following portions of the northwest quarter of section seventeen, town. and range above mentioned, bounded as follows, to wit:
77 Beginning at the northeast corner of the northwest quarter of said section seventeen; thence west 27 poles to a stake; thence south to the creek; thence down the creek meandering to the west line of said quarter section; thenceforth to the southwest corner; thence east to the southeast corner of said quarter section; thence north to the place of beginning, containing one hundred and seven acres, more or less. Also, the following portions of the northwest quarter of section twenty, town. and range above mentioned, to wit: Beginning at the northeast corner of said northwest quarter; thence south one hundred and sixty perch; thence west sixty perch; thence north one hundred and sixty perch; thence east sixty perch, to the place of beginning, containing sixty acres. Also, the west half of the southeast quarter of section seventeen, town. and range above mentioned, excepting the portions of said eighty, laid out in town lots and streets in the town of Buffalo, in said county. Also, the following lots, situated in the town of Buffalo, formerly called St. Marion, as more fully appears from the plat of said town, to wit: Lots one hundred fifty-seven, one hundred fifty-eight, one hundred fifty-nine, one hundred sixty, one hundred sixty-one, one hundred sixty-two, one hundred sixty-three, one hundred sixty-four, one hundred sixty-five, one hundred sixty-six, one hundred sixty-seven, one hundred sixty-eight, all in block one, of said town. Also, lots fifty-one, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, and sixty, in block two, of said town.
Also, lots sixty-one, sixty-two, and portions of sixty-three, sixty-four,
78 seventy-one, seventy-two, in block three, of said town, being on the

west half of the southeast quarter of section seventeen. Also, lots forty-one, forty-two, thirty-seven, and thirty-eight, in block nine, in said town. Also, portions of lots forty-three, forty-four, forty-five, forty-six, and forty-seven, being on the west half of the southeast quarter of section seventeen, in block nine. Also, lot ninety-seven in block ten in said town, and portions of lots ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and seven, and one hundred and eight, in block ten, being on the west half of the southeast quarter of section seventeen. Also, lots one hundred and forty-nine, one hundred and fifty, in block sixteen, portions of lots one hundred forty-five, one hundred forty-six, one hundred forty-seven, one hundred forty-eight, one hundred fifty-two, one hundred fifty-one, in block sixteen, being on the west half of southeast quarter of section seventeen. Also, lots eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, and ninety-six, in block five, in said town, together with all the streets, alleys, and public grounds in said town, being on the southeast quarter of section seventeen. Also, the west half of said quarter of section seventeen, being the residue of said quarter section seventeen, town. and range above mentioned.

E. W. DUTCHER, *Sheriff.*

Feb'y 4th, 1848.

79 By virtue of the within execution, I have this day sold, in pursuance to advertising according to law, the following described lands, situated in Ogle county, Ill's, to wit: The east half of the southwest quarter of section seventeen, town. twenty-three, of range eight, east of the fourth principal meridian, for which Jonathan H. Ransom bid the sum of two hundred dollars. Also, the following tract of land, bounded as follows: Beginning at the northeast corner of the northwest quarter of said section seventeen; thence west twenty-seven poles to a stake; thence south to the creek; thence down the creek meandering to the west line of said quarter section; thenceforth to the southwest corner of said quarter section; thence east to the southeast corner of said quarter section; thence north to the place of beginning; containing one hundred and seven acres, more or less, for which said Jonathan H. Ransom bid the sum of five hundred and thirty-five dollars. Also, the following described land, to wit, being a portion of the northwest quarter of section twenty, town. and range above mentioned, beginning at the northeast corner of said northwest quarter; thence south one hundred and sixty perch; thence west sixty perch; thence north one hundred and sixty perch; thence east sixty perch, to the place of beginning, containing sixty acres, more or less, for which said Ransom bid the sum of two hundred dollars. Also, the following described lots, situated in the village of Buffalo, and being part of the E. ½ of the northeast quarter of section seven-
80 teen, in town. and range above mentioned, to wit: Lots eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, and ninety-six, in block five, as laid out in said town plat, for which said Ransom bid the sum of one dollar each, amounting in all, for the above described lands, to nine hundred and forty-seven dollars. And said Ransom being the highest and best bidder for said lands, they were struck off to him, the said Jonathan H. Ransom. The remainder of the lands levied on, by virtue of the within execution, were sold to satisfy an execution in my hands in favor of the people *of the people* of the State of Illinois, for the use of Henry Rhines, against the same defendants, both of said executions having been issued upon a judgment rendered at the same term of court, for said county of Ogle, and both of said executions levied on the same premises, said Ransom having paid me my fees,

thirty dollars and seventy-four cents, leaving a balance, made on this execution, of nine hundred sixteen dollars and twenty-six cents.

E. W. DUTCHER, *Sheriff.*

Oregon, Feb'y 25th, 1848.

81 STATE OF ILLINOIS, *Ogle County, ss:*

I, Frederick G. Petrie, clerk of the circuit court in and for said county, in said State, do hereby certify that the above and foregoing is a true and correct transcript of the record and papers on file in my office, in said cause, wherein the people of the State of Illinois, for the use and benefit of Jonathan H. Ransom, are plaintiffs, and Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stevenson, and Smith Gilbraith, impleaded with George Chandler, are defendants, as appears by the records and files of my said office.

In testimony whereof, I have hereunto set my hand, and the seal of said court, at Oregon, in said county, this 3d day of November, A. D. 1862.

[SEAL.] F. G. PETRIE, *Clerk.*

By M. L. ETTINGER, *Dep'y.*

82 And, upon the trial of the issue aforesaid, the counsel for said plaintiff, further to maintain and prove the issue aforesaid on his part, gave in evidence, fifthly, a deed from the sheriff of Ogle county, Illinois, to said plaintiff, in the words and figures following, to wit:

Whereas the people of the State of Illinois, for the use and benefit of Jonathan H. Ransom, did, at the March term, A. D. 1841, of the circuit court of Ogle county, and State of Illinois, recover a judgment against Horatio Wales, Virgil A. Bogue, Frederick Cushman, John D. Stevenson, Oliver W. Kellogg, and Smith Gilbraith, impleaded with George Chandler, for the sum of ten thousand dollars debt and one thousand and thirty-two dollars and twenty-six cents damages, to be liquidated on the payment of said damages and costs of suit, upon which suit an execution was issued dated on the 25th day of November, A. D. 1847, directed to the sheriff of Ogle co. to execute, and by virtue of said execution, the said E. W. Dutcher,

83 sheriff, levied upon the lands hereinafter described, and the same was struck off and sold to Jonathan H. Ransom, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised, according to law, and an execution having been issued on said judgment within a year and a day of the rendition of the same, which premises levied upon are the following, to wit: The east half of the southwest quarter of section seventeen, (17,) town. twenty-three, (23,) range eight (8) east, the 4 p. m. Also the following tract, described as follows: Beginning at the northeast corner of the northwest quarter of section seventeen, (17,) town. and range aforesaid; thence west twenty-seven (27) poles to a stake; thence south to the creek meandering with the same to the west line of the said quarter section; thence south to the southewst corner of the said quarter section; thence east to the southeast corner of the said quarter section; thence north to the place of beginning, containing one hundred and seven acres, more or less. And also the following portion of the northwest quarter of section twenty, (20,) town. and range aforesaid, beginning at the northeast corner of the said northwest quarter;

84 thence south one hundred and sixty (160) perch; thence west sixty (60) perch; thence north one hundred and sixty perch; thence east sixty (60) perch, to the place of beginning, containing sixty (60) acres. And also the following lots, situate in the village of Buffalo, being a part of the west half of the northeast quarter of section seventeen, in the town. and range aforesaid, to wit: Lots eighty-five, (85,) eighty-six, (86,) eighty-seven, (87,) eighty-eight, (88,) eighty-nine, (89,) ninety, (90,) ninety-one, (91,)

ninety-two, (92,) ninety-three, (93,) ninety-four, (94,) ninety-five, (95,) and ninety-six, (96,) being in block five (5) in said town of Buffalo, in said Ogle county, aforesaid.

And also, for that afterwards, to wit, on the twenty-sixth day of February, A. D. 1848, another execution was issued out of said court on the aforesaid judgment, directed to the sheriff of Ogle county to execute; and, by virtue of said execution, the said E. W. Dutcher, sheriff, levied on the following premises, to wit: The east half of the northeast quarter of section twenty, in township twenty-three (23,)of range eight east, of the 4th
85 p. m. Also, the west half of the northeast quarter of section twenty, same town. and range; and the same was struck off to the said Ransom, and sold to him, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law:

Now, therefore, know all men by this deed, that I, Elisha W. Dutcher, sheriff of said county of Ogle, in consideration of the premises, have granted, bargained, and sold, and do hereby convey unto the said Ransom, his heirs and assigns, the following described tracts of land, all situate in the county of Ogle, and State of Illinois, and known and described as follows: The east half of the southwest quarter of section seventeen, (17,) and the following portion of the northwest quarter of said section (17) seventeen, commencing at the northeast corner of said northwest quarter of said section seventeen; from thence west along the section line twenty-seven (27) poles to a stake; thence south to the creek; thence down the creek meandering with the same to the west line of said quarter section; thence south to the southwest
86 corner of said northwest quarter section; thence east along said quarter section line to the southeast corner of said northwest quarter of section seventeen (17;) from thence north along said quarter section line to the place of beginning, containing one hundred and seven acres, more or less. Also, the following portions of the northwest quarter of section twenty, (20,) beginning at the northeast corner of said northwest quarter; thence south to the southeast corner of said quarter section one hundred and sixty perches; thence west sixty rods; thence north parallel with said first line one hundred and sixty rods; thence east sixty perches to the place of beginning, containing sixty acres, more or less. Also, the following described lots, situate in the village of Buffalo, in said county of Ogle, and being a part of the west half of the northeast quarter of section seventeen, aforesaid: lots eighty-five, (85,) eighty-six, (86,) eighty-seven, (87,) eighty-eight, (88,) eighty-nine, (89,) ninety, (90,) ninety-one, (91,) ninety-two, (92,) ninety-three, (93,) ninety-four, (94,) ninety-five, (95,) ninety-six, (96,)
87 all in block five of said village of Buffalo, in the county of Ogle, and State of Illinois. And also the following tracts, to wit: The west half of the northeast quarter of section twenty, (20,) containing eighty acres, more or less; each and every of which foregoing tracts or parcels of land are situate in township twenty-three (23) north, range eight (8) east, of the 4 p. m., in the county of Ogle, and State of Illinois:

To have and to hold the said described premises, with all the appurtenances thereunto belonging, unto the said Ransom, his heirs and assigns, forever.

Witness my hand and seal this 27th day of July, (A. D. 1849,) in the year of our Lord one thousand eight hundred and forty-nine.

ELISHA W. DUTCHER, [SEAL.]
Sheriff of Ogle County.

STATE OF ILLINOIS, *Ogle County, ss:*

Be it remembered, that on this 27th day of July, A. D. 1849, before
88 me, Robert B. Light, clerk of the circuit court, in and for the county

of Ogle, and State of Illinois, personally appeared Elisha W. Dutcher, sheriff of said county of Ogle, and to me personally known as the real person who executed the within deed, and then and there before me acknowledged that he signed, sealed, and delivered the said deed, as such sheriff, freely and voluntarily, for the uses and purposes therein set forth.

In testimony whereof, I hereunto affixed the seal of said court, at [SEAL.] Oregon, in said Ogle co., this 27th day of July, A. D. 1849.

R. B. LIGHT, *Clerk.*

Endorsed: Recorder's office, Ogle county, Ill's. I hereby certify that the within deed was filed in my office for record on the 27th day of July, 1849, and recorded July 28th, 1849, in book F of deeds, pages 353 and 354.

JOHN M. HINKLE, *Recorder Ogle Co.*

89 And thereupon the counsel for the said defendants, to maintain and prove the said issue on their part, gave in evidence, first, a certified copy of a deed, in the words and figures following, to wit:

No. 203. Filed June 28th, 1842. Recorded July 5, 1842.

SMITH GILBREATH and wife } to CHESTER K. WILLIAMS. }

This indenture, made this thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-two, between Smith ——— and Emeline, his wife, of Dixon, Lee county, and State of Illinois, of the one part, and Chester K. Williams, of Buffalo Grove, Ogle county, and State aforesaid, of the other part, witnesseth:

That the said party of the first , for and in consideration of seventy dollars in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim unto the said party of the second part, his heirs and assigns, forever, all the following described lot or parcel of land,

90 situate, lying, and being in Ogle county, and State of Illinois, and known and described as follows, to wit: Commencing at the northeast corner of the northwest quarter of section number twenty, in township twenty-three north, of range eight east; thence south one hundred and sixty perches; thence west sixty perches; thence north one hundred and sixty perches; thence east sixty perches, to the place of beginning, containing sixty acres of land, be the same more or less: to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for his heirs, executors, and administrators, does covenant and agree to and with the party of the second part, his heirs and assigns, that he will warrant and forever defend the aforesaid premises, to be free and clear of all claim or claims of all and every person or

91 persons claiming or to claim by, through, or under him, and none other.

In witness whereof, the said party of the first part have hereunto set hands and seals the day and year first above written.

SMITH GILBRAITH. [SEAL.]
EMELINE GILBRAITH. [SEAL.]

Sealed and delivered in the presence of—

ISAAC TRASK. C. H. CHAPMAN.

STATE OF ILLINOIS, *Lee County, ss:*

I, Michael Fellows, a justice of the peace in and for the county of Lee, in the State aforesaid, do certify that Smith Gilbraith, personally known to me as the person whose name is subscribed to the foregoing deed, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said deed, as his free and voluntary act, for the uses and purposes therein set forth, and the said Emeline Gilbraith, wife of the said Smith Gilbraith, having been by me examined separate and apart, and out of the hearing of her husband, and the contents of the said deed having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the land and tenements herein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

92

Given under my hand and seal at my office in Dixon, in the county aforesaid, this 31st day of May, A. D. 1842.

M. FELLOWS, [SEAL.]
Justice of the Peace.

STATE OF ILLINOIS, *Ogle County, ss:*

F. G. Petrie, clerk of the circuit court in and for said county and State aforesaid, do hereby certify that the above and foregoing is a full, true and perfect copy of a deed or instrument of writing filed in my said office for record on the 28th day of June, 1842, and recorded in book A of deeds, at page 307.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office in Oregon, this 19th day of July, A. D. 1862. [SEAL.]

F. G. PETRIE, *Clerk.*

93 And thereupon the counsel for said defendants, further to maintain and prove the issue on their part, called as a witness in said cause Henry Wales; and said witness, having been first cautioned and duly sworn in said cause, testified as follows:

My name is Henry Wales; I am a son of the defendant, Horatio Wales; I have known the premises in controversy about fifteen years; my father has been living on the premises; they are owned by C. K. Williams; my father has been working the land; my father is in possession of this land as a renter, from C. K. Williams; he has been in as such tenant ever since I can remember; I cannot state how long it is; I think I can remember back fifteen years; my father has worked the farm; it was or part of it was fenced a number of years ago; it was then thrown open for a time. It was again enclosed about five years ago; I don't know when the land was first enclosed; I remember of there being a crop on it about fifteen years ago; my father then had a crop of corn on it.

94 And thereupon said witness, Henry Wales, being cross-examined by the counsel for the plaintiff, testified as follows:

I am twenty-two years old; my father is a brother-in-law of Chester K. Williams; I have always lived at home until about two years since; I don't know anything about my father being a renter from Chester K. Williams, except what I have heard him say; I don't know that this land was inclosed in 1849; I cannot swear that it was inclosed in 1851 or 1852; I cannot swear that it was inclosed in 1854; it might have been open for five or six years; my father's house is about east from this land; I don't know that my father owns any land; there was a fence around this land three years

ago, I think; I don't know that there ever was a house on this land; this land was vacant some eight or ten years; there were no crops raised on it during that time; I do not know that my father ever paid any rent for this property.

And thereupon the counsel for the said defendants, further to main-
95 tain and prove the issue on their part, called a witness in said cause, R. K. Frisbee, who, having been first cautioned and duly sworn, testified as follows:

I have been the school treasurer of the town in which the land in controversy lies. (Here the counsel for said defendants exhibited to the witness certain receipts for taxes which purport to have been paid by C. K. Williams, and asks the witness if he knows the persons whose names are signed to these receipts and the handwriting of such persons.) I am acquainted with the persons who signed these receipts and with their handwriting; all the signatures to said receipts are genuine; the persons signing these receipts were acting as collectors; the land in controversy has been inclosed some four or five years; I think a good deal longer; I, as treasurer, have made settlements with S. C. Peck, J. W. Niman, M. D. Swift, A. A. Millard, C. F. Webster, and H. D. Parmalee.

And thereupon said witness, R. K. Frisbee, being cross-examined
96 by the counsel for said plaintiff, testified as follows:

I cannot state from my own memory who was collector of taxes in 1857 or in 1855; can tell by looking at a memorandum which I have; I made this memorandum from the town books; I know that the persons signing these tax receipts were collectors; cannot say from memory what years they were collectors.

And thereupon the counsel for said defendants, further to maintain and prove the issue on their part, gave in evidence certain tax receipts, (being the same shown to witness Frisbee,) which are in the words and figures following, to wit:

97 STATE OF ILLINOIS, *Ogle County:*

COLLECTOR'S OFFICE, *Buffalo Township.*

Received of C. K. Williams twenty-four dollars and eight cents, being the amount of his tax due said State, county, and town, for the year 1851, on his real estate and personal property, described and valued as follows:

Section.	Town.	R.	No. of Acres.	Val. pr. acre.	Total val.	State tax.	Co. tax.	Town tax.
17	23	8	36					
18	23	8	18					
20	23	8	60					
8	23	8	160					
8	23	8	160					

A. KELLOGG, *Collector.*

STATE OF ILLINOIS, *Ogle County:*

COLLECTOR'S OFFICE, *Buffalo Township.*

Received of C. K. Williams eight dollars and seventy-two cents, being the amount of his tax due said State, county, and town, for the year 1852, on his real estate and personal property, described and valued as follows:

Section.	Town.	R.	No. of acres.	Val. pr. acre.	Total val.	State tax.	Co. tax.	Town tax.
Part SE ¼ 17 ..	23	8	36					
E. ½ NW. ½ 20....	23	8	60					

A. KELLOGG, *Collector.*

98 BUFFALO TOWN, *Ogle County:*

Received of C. K. Williams eight dollars and eighty-seven cents, for State, county, and town taxes, for 1853, on the following described property:

Part SE. ¼ 17	23	8	36
Part E. ½ SW. ¼ 18	23	8	18
E. ½ NW. ¼ 20	23	8	60

A. KELLOGG, *Collector.*

Collector's receipt.

STATE OF ILLINOIS, *Ogle County, ss:*

Received, Feb. 13, 1855, of C. K. Williams, twelve dollars and seventy-two cents, being the amount of his State, county, town, road, school, and back taxes, due said county and State on his real and personal property for the year A. D. 1854.

Part of sec.	Sec.	Tn.	Ran.	Acrs.	Town lots.	Bl'k.	State.	C'nty.	Town.	Road.	School.	Back tax.	Total tax.
Lot 1 NE. ¼	1	23	8	79.31	.....	.....	$0 78	$0 64	$0 10	.....	.....	.....	$1 52
E. ½ SE ¼..	17	23	8	36	.....	.....	1 51	1 22	20	.....	.....	.....	2 93
P'rt E.½ SW.½	18	23	8	18	.....	.....	44	36	05	$0 14	.....	.....	99
NW. ¼.....	20	23	8	60	.....	.....	89	72	12	.....	.....	.....	1 73
Person'l property tax..	.....	....	.....	.....	.....	.....	2 86	2 32	37	.....	.....	.....	5 55
							6 48	5 26		.....	.....	.....	12 72

WM. HAYNES, *Collector.*

99 *Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, Feb. 18, A. D. 1856, of C. K. Williams, fifty-six dollars and twenty-seven cents, being the amount of his State, county, town, road, school, and back taxes due said county and State on his real and personal property for the year 1855.

Part of sec.	Sec.	Tn.	Ran.	Acrs.	Town lots.	Bl'k.	State.	C'nty.	Town.	Road.	School.	Back tax.	Total tax.
NE. ¼	8	23	8	160	.....	.....	$8 58	$2 56	$2 30	$0 72	.....	.....	$14 16
Part SE ¼..	8	23	8	160	.....	.....	15 01	4 48	4 03	96	.....	.....	23 52
" SE. ¼..	17	23	8	36	.....	.....	3 14	94	84	.....	.....	.....	4 92
E. ½ SW ¼	18	23	8	18	.....	.....	1 21	36	32	14	... ..	.....	2 03
NW ¼ NE ¼	20	23	8	40	.....	.....	2 68	80	72	18	.....	.....	4 38
" E.½ NW.¼	20	23	8	60	.....	.....	2 81	84	76	.....	.....	....	4 41
Person'l property tax..	.....	....	.....	.....	.....	.....	1 82	54	49	.....	.....	.....	2 85
							30 96						56 27

WM. HAYNES, *Town Collector.*

100 *Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, March 10th, A. D. 1857, of C. K. Williams, sixty-nine dollars and forty-one cents, being the amount of his State, county, town, road, school,

and back taxes due said county and State on his real and personal property for the year 1856.

Part of sec.	Sec.	Tn.	Ran.	Acrs.	Town lots.	Bl'k.	State.	C'nty.	Town.	Road.	School.	Back tax	Total tax.
NE. ¼	8	23	8	160			$8 38	$2 56	$0 90		$15 36		$27 40
SE. ¼				160			15 01	4 48	1 57				21 06
P't SE. ¼	17			36			3 04	94	33	$0 70			5 11
E. ½ SW. ¼	18			18			1 21	36	13				1 70
NW. ¼ NE. ¼	20			40			2 68	80	28				3 76
E ½ NW. ¼				60			2 81	84	29	63			4 57
Person'l property tax							4 14	1 24	43				5 81
							37 27	11 22	3 93				69 41

S. C. PEEK, *Collector.*

101 *Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, Polo, March 8, A. D. 1858, of C. K. Williams, sixty dollars and fourteen cents, being the amount of his State, county, town, road, and district school taxes, due said county and State on his real and personal property for the year 1857.

Part of sec.	Sec.	Tn.	Ran.	Acrs.	Town lots.	Bl'k.	State.	C'nty.	Town.	Road.	School.	D. S. T.	Total tax.
NE.	8	23	8	160			$5 36	$2 40	$1 64			$8 00	$17 40
SE. ¼	8	23	8	160			11 79	5 28	3 61			4 40	25 08
Part SE. ¼	17	23	8	36			96	43	30			36	2 05
E ½ SW. ¼	18	23	8	18			1 21	54	37	$0 27		45	2 84
NW. ¼ NE. ¼	20	23	8	40			1 34	60	41			50	2 85
P't E. ¼ NW. ¼	20	23	8	60			2 01	90	62			75	4 28
Person'l property tax							2 65	1 19	81			99	5 64
													60 14

JOHN W. NIMAN, *Town Collector.*

102 *Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, May 12th, A. D. 1859, of C. K. Williams, eighty-six dollars and eleven cents, being the amount of his State, county, town, road, school, and district school taxes due said county and State on his real and personal property for the year 1858.

Part of sec.	Sec.	Tn.	Ran.	Acr's.	Town lots.	Bl'k.	State.	C'nty.	Town.	Road.	School.	D. S. T.	Total tax.
NE. ¼	8	23	8	160			$5 36	$2 40	$0 50	$1 06		$8 00	$17 32
SE. ¼	8	23	8	160			11 79	5 28	1 11	2 34		17 60	38 12
Part SE. ¼	17	23	8	36			96	43	9	19		1 44	3 11
E ½ SW. ¼	18	23	8	18			1 21	54	11	24		1 80	3 90
NW. ¼ NE. ¼	20	23	8	40			1 34	60	13	27		2 00	4 34
P't E ¼ NW ¼	20	23	8	60			2 01	90	19	40		3 00	6 50
T'n of Polo.					3	14	34	18	3	7		20	79
Person'l property tax							3 72	1 67	35	74		5 55	12 03
							26 73						86 11

M. D. SWIFT, *Town Collector.*

103 *Collector's receipt.*

No.———. $78 84.

POLO, *Ogle County, Illinois:*

Received, Feb. 13, A. D. 1860, of C. K. Williams, seventy-eight dollars and eighty-four cents, in full for taxes of 1859, on the following described real estate and personal property, to wit:

Part of section.	Sec.	Town.	Range.	Acres.	Town lots.	Blocks.	State.	County.	Town.	D. S.	R. & B.	D. R. tax.	P. P. tax.	Total tax.
NE. ¼	8	23	8	160	....	....	$4 29	$2 56	$0 56	$4 80	$0 64	....	....	$12 85
SE. ¼	8	23	8	160	....	....	9 65	5 76	1 25	10 80	1 44	....	....	28 90
Part SE. ¼	17	23	8	36	....	....	5 62	2 16	47	4 05	64	....	....	10 84
Part E. ½ SW. ¼	18	23	8	18	....	....	97	58	13	1 08	14	....	....	2 90
Part E. ½ NW. ¼	20	23	8	60	....	....	1 61	96	20	1 80	24	....	....	4 81
NW. ¼ NE. ¼	20	23	8	40	....	....	1 07	64	14	1 20	16	....	....	3 21
In Polo	....	....	....	....	3	14	1 34	80	17	1 60	20	....	....	4 11
Personal property tax	....	....	....	....	....	....	3 75	2 23	49	4 19	56	....	....	11 22
														78 84

A. A. MILLARD, *Town Collector.*

104 *Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, Dec. 15th, A. D. 1861, of C. K. Williams, ninety dollars and sixty-three cents, being the amount of his State, county, town, road, school, and district school taxes due said county and State on his real and personal property for the year 1860.

Part of section.	Section.	Town.	Range.	Acres.	Town lots.	Block.	State.	County.	Town.	Road.	School.	D. S. T.	Total tax.
NE. ¼	8	23	8	160	.....	....	$4 29	$2 56	$1 22	$0 32	$6 40	.....	$14 79
SE. ¼	8	23	8	160	.....	....	9 65	5 76	2 74	1 72	14 40	.....	33 27
Part SE. ¼	17	23	8	36	.....	....	3 62	2 16	1 03	27	5 40	$1 08	13 56
Part E. ½ SW. ¼	18	23	8	18	.....	....	97	58	26	7	1 44	.....	3 32
NW. ¼ NE. ¼	20	23	8	40	.....	....	1 07	64	30	8	1 60	32	4 01
Part E. ½ NW. ¼	20	23	8	60	.....	....	1 61	96	46	12	2 40	48	6 03
					13	14	67	40	19	5	1 00	.....	2 31
Personal property tax	....	....	....	.....	.....	....	.....	.....	.....	....	...	....	13 34
													90 63

C. F. WEBSTER, *Town Collector.*

105 *Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, Polo, March 1, A. D. 1862, of C. K. Williams, sixty-five dollars and 69 cents, being the amount of his State, county, town, road, school, and

district school taxes due said county and State on his real and personal property for the year 1861.

Part of section.	Section.	Town.	Range.	Acres.	Town lots.	Blocks.	State.	County.	Town.	School.	Road & B.	D. R. T.	Total tax.
NE. ¼	8	23	8	160	.....	....	$2 88	$2 56	$0 32	$3 20	$0 38	$0 32	$9 66
SE. ¼	8	23	8	160	.....	....	7 20	6 40	80	16 00	96	.....	31 36
Part SE. ¼	17	23	8	36	.....	....	3 24	2 88	36	7 20	43	.....	14 11
Part E. ½ SW. ¼	18	23	8	18	.....	....	65	58	07	1 44	01	.....	2 75
NW. ¼ NE. ¼	20	23	8	40	.....	...	72	64	08	1 60	09	.....	3 13
Part E. ½ NW. ¼	20	23	8	66	.....	....	1 08	96	10	2 40	14	.....	4 68
Personal property tax	....	....	....	.....	.....	....	.....	.....	.....	.....	.....	.....	.....
													65 69

H. D. PARMELEE, *Town Collector.*

106 And thereupon, the counsel for said defendants, further to maintain and prove the issue on their part, then gave in evidence a certified copy of the record of the Ogle county circuit court, in the words and figures following, to wit:

STATE OF ILLINOIS, *Ogle County:*

At a circuit court sitting as a court of chancery, begun and holden at the court-house in Oregon, in and for the county of Ogle, in the State of Illinois, on the third Monday of March, in the year of our Lord eighteen hundred and fifty-nine, then and there being present honorable John V. Eustace, judge, Mortimer W. Smith, clerk, Frederick G. Petrie, sheriff, Joseph Sears, master in chancery.

Attest: MORTIMER W. SMITH, *Clerk.*

And afterwards, to wit, on the 25th day of March, A. D. 1859, a stipulation in the words and figures following was filed in said court, to wit:

STATE OF ILLINOIS, *Ogle County, ss:*

Lemuel N. Barber, Zenos Aplington, Jonas M. Reed, John H. Funk,
107 Harrison N. Murray, George Lawson, John Donaldson, James Brand, Thomas Cutts, James Lawson, George Octeal, Benjamin Sweeny, jr., Daniel Buck, William Berkan, Thomas B. Benedict, Emily Hotchkiss, John Spicer, Francis Fisher, J. Giles Brown, Luke W. Warren, Peter Kenyon, Andrew Tice, Charles Cogswell, Harrison Sandford, Ahira Sandford, John J. Thompson, James C. Phelps, Wesley Johnston, doing business under the name and style of Phelps & Johnston, and Zenos Aplington and William C. Stedman, doing business under the name and style of Z. Aplington & Co.

Whereas on or about the twenty-fifth day of June, A. D. 1857, Cornelius Woodruff, James Brand, and George W. Cooper, acting as school directors of school district No. two, in town. twenty-three, range eight east, aforesaid, a tax of three-fourths of one per cent. on each one hundred dollars valuation of the taxable property in said school district for general school purposes, and the further sum of three hundred dollars for paying teachers and other incidental expenses which said tax, so levied as aforesaid, would amount to the sum of twelve hundred and six $\frac{15}{100}$ dollars; and whereas the said assessment of three hundred was levied of said school directors
108 for an illegal purpose, and was and is void in law; and whereas the said tax so assessed as aforesaid was certified to the county clerk of said county as being three hundred and two $\frac{46}{100}$ more than the sum actually

assessed by the said directors as aforesaid, whereby the entire assessment of three-fourths of one per cent. on all the taxable property in said school district, and the said assessment of three hundred dollars, was void; that said county clerk issued his warrant to the defendant, John W. Nyman, a tax collector in said town of Buffalo, in and by which said warrant, said John W. Nyman was required to collect the sum of fifteen hundred and six $\frac{15}{100}$ dollars; and whereas the above complainants, by a writ of injunction issued out of the circuit court of Ogle county, restrained the said John W. Nyman from the collection of the aforesaid tax or any part thereof, which said injunction is still in full force and effect:

Now, therefore, it is hereby stipulated by and between the said complainants and the said defendant, by their attorneys, that the said John W. Nyman, his successors, and all persons having or pretending to have any
109 authority to execute said warrant for the collection of said tax, be forever and perpetually enjoined and restrained from the collection of the said tax and assessment of it or any part thereof as assessed by said school directors, and as levied by said county clerk as aforesaid, and that said complainants pay the costs of this suit.

CAMPBELL & CARPENTER,
Solicitors for Complainants.
E. F. DUTCHER,
Solicitor for Def't.

And afterwards, to wit, on Tuesday, the 5th day of April, A. D. 1859, the same being as yet of the said March term, 1859, of said court, the following proceedings were had and entered of record in said cause, to wit:

Lemuel A. Barber, Zenas Aplington, Jonas M. Reed, John H. Funk, Harrison N. Murray, George Lawson, John Donaldson, James Brand, Thomas Cutts, James Lawson, George O'Neal, Benjamin Sweeney, jr., Daniel Buck, William Berkan, Thomas B. Benedict, Emily Hotchkiss, John Spicer, Francis Fisher, J. Giles Brown, Luke W. Warren, Peter Kenyon, Andrew Tice, Charles Cogswell, Harrison Sanford, Ahira Sandford, John J. Thomp-
110 son, James C. Phelps and Wesley Johnston, doing business under the name and style of Phelps & Johnston, and Zenas Aplington and William C. Stedman, doing business under the name and style of Z. Aplington & Co. *vs.* John W. Niman—injunction.

And now on this day comes the said complainants, by Campbell and Carpenter, their solicitors, and the defendant comes by E. F. Dutcher, his solicitor, and the said parties having filed their stipulation herein, now appear in open court, and by agreement it is ordered, adjudged, and decreed, that the injunction issued herein be made perpetual, and that the complainants pay the costs herein according to the terms of said stipulation, and that the defendant have and recover of the complainants his costs in this behalf expended, and that he have execution therefor.

STATE OF ILLINOIS, *Ogle County:*

I, F. G. Petrie, clerk of the circuit court in and for said county, do certify that the above are true and correct copies of the stipulation on file and the order of record in said cause therein above stated.

111 Witness my hand and the seal of said court this 6th day of February, A. D. 1863.

[SEAL.]

F. G. PETRIE, *Clerk,*
By M. L. ETTINGER.

To the introduction of which said record the counsel for said plaintiff then and there objected, which objection was overruled by the court and said record was then read to the jury.

And thereupon the counsel for said defendants, further to maintain and prove the issue on their part, recalled said R. K. Frisbee as a witness, who testified as follows:

The land in controversy was in school district number two, on the fifth day of April, 1859; Smith Gilbraith died in the year 1843; I think in the early part of the year 1843. (There was no controversy on this point at the trial; it was not disputed but that he died in 1843.)

And thereupon the counsel for said defendants, further to maintain and prove the issue on their part, gave in evidence a certified copy of letters of administration, in the words and figures following, to wit:

112 STATE OF ILLINOIS,
County of Lee, Probate Justice's Office, sct:

The people of the State of Illinois to all to whom these presents shall come, greeting:

Know ye, that whereas Smith Gilbraith, of the county of Lee, and State of Illinois, died intestate, as it is said, on or about the fifth day of February, A. D. 1843, having at the time of his decease personal property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do appoint Emeline Gilbraith, Lorenzo P. Sanger, and James P. Dixon, of the county of Lee, and State of Illinois, administrators of all and singular the goods and chattels, rights and credits, which were of the said Smith Gilbraith, at the time of his decease, with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this State, and in general to and perform all other
113 acts which now are or hereafter may be required of them by law.

Witness Harvey Morgan, probate justice, in and for the county of Lee, at his office in Dixon, this 25th day of February, A. D. 1843.

There being no official seal yet provided, I have affixed my private seal.

H. MORGAN. [L. S.]
Probate Justice Lee Co., Ill's.

STATE OF ILLINOIS, *Lee County, ss:*

I, James A. Hawley, clerk of the county court, in and for the county of Lee, and State of Illinois, do hereby certify that the foregoing is a full, true, and perfect copy of the letters of administration granted to the administrators therein named of the estate of Smith Gilbraith, deceased, as appears to me of record.

In witness whereof, I have hereunto set my hand and affixed the seal of
[SEAL.] said court. Done at my office, in Dixon, this twenty-seventh day of January, A. D. 1863.

JAMES A HAWLEY, *Clerk County Court,*
114 Per H. L. BOSWORTH, *Dep't.*

And thereupon the counsel for the plaintiff, further to maintain and prove the issue on his part, gave in evidence the depositions of Charles F. Webster and Henry A. Mix, which deposition is in the words and figures following, to wit:

My name is Charles F. Webster; my age is forty years; I reside in the town of Buffalo, in Ogle county, Illinois; I am not acquainted with the plaintiff; am acquainted with both of said defendants; have known them about six years; I was collector of taxes for the town of Buffalo, in said county, for the year 1860; I was elected in April of said year, and duly qualified and acted as such collector; I was such collector under the laws of said State; I

have seen this paper marked A; (here Exhibit A hereto attached is exhibited to witness;) it is my receipt as such collector for the taxes of said year on the lands therein described; the signature is mine; I presume these were all the taxes extended on said land in said year; it was all that
115 was *that was* entered upon the collector's book for said year on said tract of land; said taxes were paid; I would say from the appearance of this receipt that the taxes for said year on said land was paid on the 18th day of February, A. D. 1861.

Cross-examined.

I could not tell anything about the date on which said taxes were paid except from the appearance of the receipt, except that it was some time after I received the book. I think the taxes on said land for said year was paid to me by another person, to wit, by Chester K. Williams. Mr. Williams had other property in said township upon which he paid taxes of said year; the said taxes paid by said Williams were paid at the same time said Williams paid his said other taxes, and I think I gave him a receipt; I think I recollect of Mr. Williams coming to me soon after I got the collector's book and requested me to make out his receipt, and I filled out a blank receipt and gave it to him; I should think it was somewhere about the first to the middle of January; I got the book about the first of December; I think I made
116 this blank for Mr. Williams before said taxes were paid by Mr. Mix; I recollect from the circumstance that collecting taxes was a new thing to me, and I thought it an unusual thing for a man to pay taxes on land that did not belong to him; I think I recollect that said tract was assessed to Mr. Williams; I think I recollect of Mr. Williams telling me at the time I made the blank that any time I wanted the money I should call for it, and I did so; I may have said to him that I would rather he would have it in his own hands than to have it myself; I can't say about that for certain; money at that time was so uncertain (it being "stump-tail times") that I was glad to have it out of my own hand; I afterwards called on Mr. Williams for the money and got it.

Direct examination resumed.

There was no particular danger that year in keeping gold and silver on hand.

Cross-examination resumed.

As I understand it, by order of the board of supervisors, all the special taxes and a portion of the State tax was to be received in currency.
117 CHARLES F. WEBSTER.

And I do further certify that the said Henry A. Mix, being by me carefully examined, cautioned, and duly sworn, to testify the whole truth, says: My name is Henry A. Mix. My age is forty-four years. I reside at Oregon, Ogle county, Illinois. I am attorney-at-law. I know the parties to this suit—have known them for several years. I remember two suits commenced in the circuit court of said Ogle county, Illinois, early in the year A. D. 1845; the parties to them were Chester K. Williams *vs.* C. Burr Artz, and Horatio Wales *vs.* C. Burr Artz. They were replevin suits to recover possession of certain personal property which had been taken by C. Burr Artz, (who was then sheriff of Ogle county,) by virtue of an execution which had been issued on a judgment in said circuit court in favor of the people of the State of Illinois, for the use of Jonathan H. Ransom, against Horatio Wales and others. I was the attorney for the said plaintiffs, Wil-

liams and Wales, in the said two replevin suits. These suits were
118 continued from term to term, and *and* were finally dismissed by the agreement of the parties. I cannot state whether said agreement was in writing or not. I have caused to be examined the records and files of said Ogle county circuit court, for the purpose of finding such an agreement, but no such agreement could be found among said records. I think the terms on which the suits were dismissed were that the plaintiffs should retain the property and pay the costs; but of this I cannot be positive. I am confident that nothing was made on said execution by reason of the levy on the property replevied, nor did the sheriff recover its value from any one. The execution by virtue of which said property was levied upon was not issued by the order of Ransom or of his attorney, as I verily believe, but was issued at the instance of other parties, or, perhaps, of the officers of court, with a view of making their costs—a large amount of which had accrued in said cause—and I verily believe that said Ransom had no knowledge of the issuing of the said execution or the agreement or settlement of said replevin suits, or the manner in which they were disposed of, as above stated. Messrs. Skinner and Beaumont were the attor-
119 neys of Mr. Ransom, and so continued for some time after the issuing of said execution, or at least Judge Skinner. Mr. Beaumont, I believe, had died previous to that time. The taxes on the east $\frac{3}{4}$ of the E. $\frac{1}{2}$ NW. $\frac{1}{4}$ of sec. 20, town. 23, range 8, east of the 4th p. m., were paid by me for the plaintiff, Ransom, on the 18th of February, A. D. 1861. I have Ransom charged with the amount of said taxes on that day, and my cash book shows the payment on that day. The receipt should have run to Ransom.

Cross-examined.

I have no knowledge that I paid the taxes, except the following facts: I handed to a clerk in my office, whom I think at the time was George P. Jacobs, an amount of money that I supposed would be ample to pay the taxes of that year on said land, and requested him to go to the collector of Buffalo township and pay them. He so did and returned me the receipt, and I thereupon charged the amount of the cash to Ransom, and entered
120 the same on my cash book, both of which entries appear, as above stated, on the 18th Feb., 1861. At said time said Ransom resided in the city of New York, and was not a resident of the town of Buffalo during the years 1860 and 1861. Said defendant, Chester K. Williams, resided in the said town of Buffalo.

HENRY A. MIX.

A.—*Collector's receipt.*

STATE OF ILLINOIS, *Ogle County, ss:*

Received, Feb. 18th, A. D. 1861, of H. A. Mix, six dollars and three cents, being the amount of his State, county, town, road, school, and district school taxes due said county and State on his real and property for the year 186 :

Part of sec.	Sec.	Tn.	Ran.	Acrs.	Town lots.	Bl'k.	State.	C'nty.	Town.	Road.	School.	D.S.T.	Total tax.
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$	20	23	8	60	....	.....	$1 61	$0 96	$0 46	$0 12	$2 40	$0 48	$6 03

Personal property tax.

C. S. WEBSTER, *Town Collector.*

Whereupon the said counsel for the said plaintiff did then and there, on behalf of the said plaintiff, insist before the said court that the said
121 matters so produced and given in evidence on the part of said plaintiff, as aforesaid, were sufficient, and ought to be admitted and allowed as decisive evidence to entitle the said plaintiff to a verdict on the said issue, so joined as aforesaid, between the parties aforesaid; and the said counsel for the said plaintiff did then and there pray the said judge of said court to admit and allow the said matters so produced and given in evidence for the said plaintiff to be conclusive for the said plaintiff to entitle him to a verdict in this cause; but to this the counsel for the said defendants did then and there object and insist before the said court that the same matters, so given in evidence on the part of the said plaintiffs, were not sufficient and ought not to be admitted or allowed to entitle the said plaintiff to a verdict; but that the matters so given in evidence, on the part of the said defendants, were sufficient and ought to be admitted and allowed to bar the said plaintiff of his action aforesaid.

And the said judge did also then and there further declare and deliver his opinion to the said jury, among other instructions. It is in evidence,
122 and the fact is not controverted, that Smith Gilbraith died in the year A. D. 1843, and that letters of administration were issued upon his estate on the 25th day of February, A. D. 1843. The judgment in the Ogle county circuit , in favor of the people of the State of Illinois, for the use of Ransom, against Horatio Wales, Smith Gilbraith, and others, became a lien on the lands of Gilbraith before he died, but the execution which issued on said judgment, and upon which the land in controversy was sold, did not issue until November, 1847. By the statute of this State three months' notice should have been given to the administrators before the issuing of this execution upon which the land in controversy was sold, and under which sale the plaintiff claims title. There is no proof that this notice required by the statute was ever given to the administrators of Gilbraith's estate, and I think it was incumbent upon the plaintiff to show affirmatively that this notice had been given. The only doubt in my mind has been in relation to the effect of the order of the court for the issuing of this execution; but, upon reflection, I think it has no important bearing upon the
123 case. All executions are presumed to be issued by order of the court, and if the proper notice had not been first given to the administrators of Gilbraith's estate of the existence of this judgment, the ordering of this execution by the court must mean an execution in conformity with law, and would not make it a valid writ as against the estate of Gilbraith; and in the absence of notice, the order could hardly be presumed to include an execution against the estate of Gilbraith.

In the absence of proof that three months' notice of the existence of this judgment was given to the administrators of the estate of Gilbraith prior to the date of issuing the writ upon which this property was sold by the sheriff to Ransom, I must instruct the jury that the execution so issued was void, and that the plaintiff who purchased the land at a sale upon said execution acquired no title to the property by such purchase, and the sheriff's deed, made in pursuance of such sale; that the execution being void, the levy sale and the sheriff's deed to the plaintiff are a nullity. To which last-mentioned opinion of the said judge, so far as the same relates to the necessity of proving service of notice on the administrators of the estate
124 of Gilbraith, and so far as the same relates to the validity of the execution issued by order of the court, and the levy and sale made by virtue of said execution, and so far as the same relates to the title of the said plaintiff, acquired under the sale upon said execution, the said counsel for said plaintiff did then and there, on behalf of said plaintiff, except.

And the said judge, under the charge and with the directions aforesaid, left the aforesaid issue and the evidence so given on the trial thereof, as aforesaid, to the said jury; and the jury, aforesaid, then and there gave their verdict for the said defendants; and inasmuch as the said several matters so produced and given in evidence on the part of the said plaintiff and by his counsel aforesaid, insisted on to maintain the issue aforesaid on his part, do not appear by the record of the verdict aforesaid, the said counsel for the said plaintiff did then and there propose their aforesaid exceptions to the opinion of the said judge, and requested him to put his seal to the bill of exceptions containing the said several matters so produced and given in evidence on the part of said plaintiff, as aforesaid, according to the
125 form of the statute in such case made and provided; and thereupon the said judge, at the request of the said counsel for said plaintiff, did put his seal to this bill of exceptions, pursuant to the aforesaid statute, in such case made and provided on the day of February, in the year of our Lord one thousand eight hundred and sixty-three.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed Feb'y 12th, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the twenty-fourth day of November, A. D. 1863, came said plaintiff and filed his bond in said entitled cause, which said bond is in the words and figures following, to wit:

Know all men by these presents, that we, Ezekiel S. Smith and John R. Parsons, of Chicago, Illinois, are held and firmly bound, unto Chester K. Williams and Horatio Wales, of Ogle county, Ill., in the sum of four hundred dollars, ($400,) to be paid to the said Williams and Wales, their
126 executors or administrators; to the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 24th day of November, A. D. 1863.

Whereas Jonathan H. Ransom has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the circuit court of the United States, and northern district of Illinois, in the suit wherein Jonathan H. Ransom is plaintiff, and the said Chester K. Williams and Horatio Wales are defendants:

Now, therefore, the condition of this obligation is such, that if the abovenamed Jonathan H. Ransom shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. S. SMITH. [SEAL.]

Sealed and delivered in presence of—
JOHN R. PARSONS. [SEAL.]

Approved: THOMAS DRUMMOND.

Endorsed: Filed Nov. 24th, 1863.

WM. H. BRADLEY, *Clk.*

127 On this day, to wit, the thirtieth day of November, A. D. 1863, a citation issued, directed to the said defendants Chester K. Williams and Horatio Wales, which said citation, with acceptance of service endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

To Chester K. Williams and Horatio Wales, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the eighth circuit and northern district of Illinois, wherein Jonathan H. Ransom is plaintiff in error and you are defendants in error to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Drummond, district judge for the northern district of Illinois, this twenty-seventh day of November, in the year
128 of our Lord one thousand eight hundred and sixty-three.

THOMAS DRUMMOND.

I hereby accept service of the within citation this 30th day of Nov., A. D. 1863.

CHAS. HITCHCOCK,
Att'y for Def'ts in Error.

Endorsed: Filed Nov. 30, 1863.

WM. H. BRADLEY, *Clk.*

129 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the record and proceedings had in the cause wherein Jonathan H. Ransom was plaintiff, and Chester K. Williams *et al.* were defendants, as the same appears from the records of said court now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in Chicago, in said district, this 3d day of
[SEAL.] December, A. D. 1863, and of our independence the 88th year.

WILLIAM H. BRADLEY, *Clerk.*

130 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court before you, between Jonathan H. Ransom, plaintiff, and Chester K. Williams and Horatio Wales, defendants, a manifest error hath happened to the great damage of the said Jonathan H. Ransom, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of De-
131 cember next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error

what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the United States, this [SEAL.] twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the 88th year.

WM. H. BRADLEY, *Clerk.*

132 Supreme Court or the United States of America, of the December term, A. D. 1863.

JONATHAN H. RANSOM, plaintiff in error,
vs.
CHESTER K. WILLIAMS, HORATIO WALES, def'ts in error. } Ejectment.

Appeal from the circuit court of the United States for the northern district of Illinois.

Assignment of errors.

And afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States of America, comes the said Jonathan H. Ransom, by E. S. Smith, his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1st. The court erred in instructing the jury that the order of the court for the issuing of the execution was void and without effect in law.

2d. The court erred in instructing the jury that the execution on which the land in question had been sold by the sheriff was void, for the reason that there was no proof that three months' prior notice had been given by the plaintiff to the administrators of the estate of Gilbraith of the existence of the judgment, and of the issuing of the execution on which the property was sold by the sheriff to the plaintiff in the suit.

3d. The court erred in instructing the jury that the levy made upon the execution was a nullity; that the sale thereon was a nullity; and that the deed of the sheriff to the plaintiff upon the sale was also a nullity.

E. S. SMITH, *Att'y for Pl'ff.*

Filed 11 Dec'r, 1863.

SUPREME COURT OF THE UNITED STATES,

December Term, 1864.

JONATHAN H. RANSOM,
vs.
CHESTER K. WILLIAMS, AND
HORATIO WALES.

No. 184.

Error to the Circuit Court for the Eighth Circuit and Northern District of Illinois.

ABSTRACT OF RECORD.

This action is ejectment for the east three-fourths of the east half of the north-west quarter of section 20, township 23 north, range 8, east of the 4th P. M.

The plaintiff gave in evidence:

1st. A certificate from the Register of the Land Office at Dixon, Ills., dated January 27, 1842, to Horace Chatfield, of the purchase of the north-west quarter of said Section.

2d. A deed from Horace Chatfield to Smith Gilbraith, dated January 27, 1842.

3d. A patent from the United States to Horace Chatfield dated May 1, 1843.

4th. The record of a judgment in the Circuit Court of Ogle Co., in favor of the People of the State of Illinois, for the use of the plaintiff, against Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson and Smith Gilbraith, impleaded with George Chandler, recovered March 27, 1841, for $10,000 debt, $1,032.26 damages, and costs, to be discharged upon payment of damages and costs.

5th. An execution thereon, issued Nov. 22, 1841, and returned unsatisfied.

6th. An execution thereon, issued May 28, 1847, upon which a sale of land was made, Aug. 10, 1847.

7th. An order of Court, entered Sept. 24, 1847, quashing the execution, setting aside the sale of Aug. 10, 1847, and directing another execution to issue.

8th. An execution, issued Nov. 25, 1847, against Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg and John D. Stephenson "and the lands and tenements of Smith Gilbraith, now deceased," upon which a sale was made to the plaintiff in this case, Feb'y 25, 1848.

9th. A deed of the Sheriff to the plaintiff, dated July 24, 1849.

Many executions upon this judgment, and records in replevin suits were given in evidence, but as no questions were made upon them they are omitted in this abstract.

The defendant, Chester K. Williams, introduced the following evidence:

1st. A deed from Smith Gilbraith and wife, to Chester K. Williams, dated May 31, 1842.

2d. Evidence tending to show that the defendant Williams took possession of the premises in the year 1848, and had paid the taxes since that time.

3d. Evidence, which was not controverted, that Gilbraith died in 1843.

4th. Letters of administration upon his estate, issued to Emeline Gilbraith, Lorenzo P. Sanger and James P. Dixon, by the Probate Justice of Lee County, Ill., on the 25th of Feb'y, 1843.

The case involves the effect of the execution of November 25th, 1847, issued against the defendants, Wales, Bogue, Cushman, Kellogg and Stephenson, "and the lands and tenements of Smith Gilbraith, now deceased," and the sale under it.

The Court instructed the jury as follows upon this part of the case:

"It is in evidence, and the fact is not controverted, that Smith Gilbraith died in the year A. D., 1843, and that letters of administration were issued upon his estate on the 25th day of February, A. D., 1843. The judgment in the Ogle County Circuit in favor of The People of the State of Illinois, for the use of Ransom, against Horatio Wales, Smith Gilbraith, and others, became a lien on the lands of Gilbraith before he died, but the execution which issued on said judgment and upon which the land in controversy was sold, did not issue until November, 1847. By the statute of this State, three months notice should have been given to the administrators before the issuing of this execution upon which the land in controversy was sold, and under which sale the plaintiff claims title. There is no proof that this notice required by the statute was ever given to the administrators of Gilbraith's estate, and I think it was incumbent upon the plaintiff to show affirmatively that this notice had been given. The only doubt in my mind has been in relation to the effect of the order of the Court for

the issuing of this execution, but upon reflection I think it has no important bearing upon the case. All executions are presumed to be issued by order of Court, and if the proper notice had not been first given to the administrators of Gilbraith's estate, of the existence of this judgment, the ordering of this execution by the Court must mean an execution in conformity with law and would not make it a valid writ as against the estate of Gilbraith, and in the absence of notice the order could hardly be presumed to include an execution against the estate of Gilbraith. In the absence of proof that three months notice of the existence of this judgment was given to the administrators of estate of Gilbraith prior to the date of issuing the writ upon which this property was sold by the Sheriff to Ransom, I must instruct the jury that the execution so issued was void, and that the plaintiff, who purchased the land at a sale upon said execution, acquired no title to the property by such purchase and the Sheriff's deed made in pursuance of such sale,—that the execution being void, the levy, sale and Sheriff's deed to the plaintiff are a nullity."

It is this portion of the charge which is assigned for error.

ARGUMENT OF DEFENDANT IN ERROR.

The execution of November 25th, 1847, against the lands and tenements of Smith Gilbraith, deceased, was void, and the sale under it a nulity. This is a settled rule of property in Illinois.

Brown vs. Parker, 15 *Ill.*, 307.
Laflin vs. Herrington, 16 *Ill.*, 301.
Finch et al. vs. Martin et al., 19 *Ill.*, 105.

This rule has been approved by the Supreme Court of the United States and by the Courts of last resort of most of the States.

Erwin's Lessee vs. Dundas, 4 *How., S. C.*, 58.
Stymets vs. Brooks, 10 *Wend.*, 207.
Lessee of Massie's Heirs vs. Long, 2 *Ham*, 287.
The State vs. Pool, 6 *Ired.*, 288.
Gwin vs. Latimer, 4 *Yerg.*, 22.
Abercrombie vs. Hall, 6 *Alabama*, 657.
The State vs. Michaels, 8 *Blackf.*, 436.

In New Hampshire, Pennsylvania and Mississippi, the Courts have decided that an execution issued after the death of a defendant is voidable only and cannot be attacked collaterally.

It is, however, believed that it is no longer an open question either in this Court or in the Courts of Illinois.

Under the laws of Illinois, the judgment should have been revived by *scire facias*, or by a notice in writing to the administrators of the deceased, of the existence of the judgment before issuing the execution. The first is a common law procedure, and the second is authorized by a statute in the following words:

"Whenever a judgment has been or may hereafter be obtained in any Court of Record of this State, against any person or persons who has or shall, after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without first reviving the judgment against their heirs or legal representatives: *Provided, however*, the plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months notice in writing, of the existence of said judgment, before the issuing of execution."

Rev. Stat., Chap. 57, *Sec.* 39.

This notice is provided as a protection to heirs against dormant judgments, and is a substitute for *scire facias*. No evidence was offered of revivor in either mode.

It was said upon the trial below, and it is supposed that such will still be the line of argument, that "the Court will presume the statutory notice to have been given in the absence of all evidence upon the subject."

It is difficult to see what maxims of law relating to presumptions or to the burden of proof can be called to the aid of this argument.

The maxim, "*Ex diuturnitate temporis omnia præsumuntur rite et solenniter esse acta*," is applied only after the lapse of thirty years.

Vide, 1 *Greenleaf on Ev.*, 26.

It would seem an extraordinary extension of this maxim to apply it to such a case as that under argument, even if lapse of time and possession aided its application.

It will hardly be argued that the order of Court of September 24th, 1847, vacating a levy and sale upon a prior execution, and

directing another execution to issue, was a judicial determination of the fact of written notice to the administrators of the existence of the judgment. It does not appear that the fact of Gilbraith's decease, or of notice, was in question before the Court, or that it assumed to determine either fact. It might as well be said that the Court by such order judicially determined that the judgment had been regularly revived by *scire facias.*

It would be as logical to insist that the order for an execution in the original judgment determined the regularity and validity of the execution actually issued. The order does not direct an execution against "the lands and tenements of Smith Gilbraith, now deceased," but simply an execution in general terms. It was an order for a regular and valid execution, and it was incumbent on the plaintiff to make it such by *scire facias* or notice, or by limiting its operation to the living defendants.

It seems clear that every maxim of the law imposes the burden of proof in this respect upon the plaintiff.

1st. He claims a statutory benefit and must aver and prove himself to be within the terms of it.

Kitchell vs. Burgwin, et ux, 21 *Ill.*, 40.
Helfenstein et al. vs. Cave, 3 *Clarke*, 287.

2d. He holds the affirmative in asserting title under the statute.

Hinman vs. Pope, 1 *Gil.*, 140.

3d. The fact that notice was given is peculiarly within his knowledge, and the means of proof within his control. The statute makes it his duty to give the notice and he is presumed to preserve the evidence of a fact so essential. The defendent in error is a stranger to the judgment, to the notice, and to the administrators. A party will be held to prove a negative, if the means of such

proof are specially within his control. A *fortiori* is the burden upon him, if he asserts a title upon an affirmative proposition, with the means of proof specially within his power.

4th. A different rule would impose on the defendant the burden of proving a negative.

5th. It is moreover settled as a question of authority.

Laflin vs. Herrington, 16 *Ill.*, 301.
Finch et al. vs. Martin et al., 19 *Ill.*, 105.

In both these cases it is held that death *alone* avoids the execution, and not death coupled with proof of a want of notice.

CHARLES HITCHCOCK,
For defendent in error.

Chicago, November 29th, 1864.

May it Please the Court.

Since the preparation of the foregoing brief, an argument has been submitted by counsel for the plaintiff in error, which requires examination. The abstract of the record is in some respects inaccurate.

1. Upon the fifth page of the argument, it is said that the plaintiff proved the order of court for execution to issue against the lands and tenements of Gilbraith.

Upon the fifteenth page of the argument, it is said that the record shows that the court ordered the execution to issue, and it did accordingly issue, against the lands and tenements of defendant Gilbraith.

Now, this seems to counsel for defendant in error a most material mis-statement of the order of the Circuit Court of Ogle County directing the execution, upon which the sale in question was made, to issue. The order is in the following terms :

" On this day came the said plaintiff by ———— and moves the court that the execution issued in the above suit, on which a sale was made on or about August 10, 1847, be quashed, and the sale thereon, and all subsequent proceedings had in the premises, be annulled and vacated; and the said defendants appearing by their counsel ————, and the court being fully advised in the premises, it is ordered by the court that said execution be quashed, and the sale and all subsequent proceedings had under said execution be annulled and vacated, and set aside, and another execution issued on said judgment."

It is impossible to find any language in the order to justify the statement that the court directed an execution to issue "against the lands and tenements of Gilbraith." These are precisely the words which are wanting in the order to render it an adjudication of the fact in controversy. They are words essential to the force of the argument. Without them the reasoning has no foundation whatever.

2. It is assigned for error that the court instructed the jury that the order of the court for the issuing of the execution was void, and without effect in law.

The court gave no such instruction. Full legal effect was given to the order. The court only refused to interpolate into it language directing the execution to issue against "the lands and tenements of Smith Gilbraith, deceased."

The court instructed the jury that the order did not authorize *such* an execution as was issued, and in this regard, it is respectfully submitted, there was no error.

CHAS. HITCHCOCK,
For Defendant in Error.

IN THE

United States Supreme Court,

DECEMBER TERM, 1864—No. 184.

JOHNATHAN H. RANSOM, Plaintiff in Error,

vs.

CHESTER K. WILLIAMS & HORATIO WALES,
Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR PLAINTIFF IN ERROR.

BY E. S. SMITH.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 S. CLARK ST., CHICAGO.
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STATEMENT OF THE CASE.

This was an action of ejectment, brought by Jonathan Ransom against Chester K. Williams and Horatio Wales, to recover the east three-fourths part of the east half of the north-west quarter of section twenty, in township twenty-three, north of range eight east of the fourth principal meridian, being sixty acres of land, of the value of three thousand dollars, and situate in Ogle county, in the Northern District of Illinois.

Proofs by the Plaintiff Below.

1st. The plaintiff proved certificate of entry by Horatio Chatfield, January 27th, 1842, and a patent from the government upon the certificate to said Chatfield, dated May 1st, 1843.

2d. The plaintiff proved deed from Horatio Chatfield to Smith Gilbraith, dated January 27th, 1842, the same day of entry by Chatfield, conveying all the rights whatsoever of Chatfield, with full covenants of warranty.

3d. The plaintiff gave in evidence, a copy of the judgment record of Ogle County Circuit Court, in favor of the people of the State of Illinois, for the use of the plaintiff, and against Horatio Wales, Virgil A. Bogue, Frederick Cushman, Oliver W. Kellogg, John D. Stephenson and Smith Gilbraith, rendered March 27th, 1841, for the penalty of bond, and for $1,032 damages, on which judgment, an execution was issued on the 22d day of November, 1841.

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The record also shows, that the execution was returned unsatisfied, by the sheriff, February 5th, 1842. And on the 5th day of May following, an alias execution was issued on said judgment.

The record also shows, that several executions issued and were returned, and that on the 28th day of May, 1847, another execution was issued, on which a sale of the property in question was had, and bid off by one E. F. Dutcher. This execution appears to have been the sixth writ issued upon the judgment, up to this time. The record also shows, that on the 24th day of September, 1847, a motion was made by plaintiff in the Ogle County Circuit Court, before the Hon. J. D. Caton, for an order setting aside the sale on the execution, and for an order directing another execution to be issued; on which motion, the defendant appeared by their counsel, Fuller, Peters, Noble and Miller. The motion was granted, and an order entered quashing the writ, and all proceedings on it, and, also, that another execution issue on the judgment; and on the 25th day of November, 1847, pursuant to the order of court, the seventh execution was issued on said judgment, against the defendants, and *against the lands and tenements of Smith Gilbraith, deceased*, on which execution, the sheriff made sale of the land in question, and the plaintiff in error became the purchaser.

It appears that executions 4, 5 and 6, issued against all of the defendants, Smith Gilbraith included, in form, as though all were living; and that the last one, the seventh, *which issued by order of the court*, was issued against the real estate of Gilbraith.

The record shows that this defendant, Wales, was sheriff, and for neglect of duty, the judgment was rendered on which the sale was made.

The plaintiffs then gave in evidence, the sheriff's deed on the sale, dated July 27, 1849.

PROOFS BY DEFENDANTS BELOW.

1st. The defendants gave in evidence, a deed from Smith Gilbraith to Chester K. Williams, one of the defendants, dated May 31st, 1842.

2d. The defendants attempted to prove payment of taxes, and occupation by defendant Wales, under Williams, but failed to show occupancy and payment of taxes for seven years.

3d. The defendants gave in evidence, under objection, a certified copy of letters of administration, from Probate Court of Lee county, to S. P. Sawyer and J. P. Dixon, as administrators of the estate of Smith Gilbraith, dated the 25th day of February, 1843, by which letter, it appears, he died on or about the 5th day of February, 1843.

POINTS ESTABLISHED BY THE PLAINTIFF ON TRIAL.

1st. Title in Smith Gilbraith, who was the common source of title, one of the defendants in judgment, January 27th, 1842, by deed from Chatfield.

2d. Judgment against Gilbraith and others, March 27th, 1841, and execution within a year, making judgment lien on lands of Gilbraith at that time, and lien to attach to lands of which title was afterwards acquired by Gilbraith.

3d. Order of Court for execution to issue against the lands and tenements of Gilbraith, the motion being opposed by counsel who appeared for defendants in execution, to resist the motion and the granting of the order.

5th. Sale on execution on judgment, and deed of sheriff dated July 27th, 1849.

Assignment of Errors.

1st. The court erred in instructing the jury that the order of the court for the issuing of the execution was void, and without effect in law.

2d. The court erred in instructing the jury that the execution on which the land in question had been sold by the sheriff was void, for the reason that there was no proof that three months prior notice had been given by the plaintiff, to the administrator of the estate of Gilbraith, of the existence of the judgment, and of the issuing of the execution on which the property was sold by the sheriff to the plainsiff in the suit.

3d. The court erred in instructing the jury that the levy made upon the execution was a nullity; that the sale thereon was a nullity; and that the deed of the sheriff to the plaintiff, upon the sale, was also a nullity.

PLAINTIFF'S POINTS.

I.

The judgment was the first lien on the property in question.

II.

There being no competent testimony showing the appointment of administrators of the estate of Gilbraith, no proof of notice was required by the statute, therefore the issuing of execution against the lands and tenements of the deceased defendant was regular.

III.

The record showing the issuing of execution, by order of court, it is conclusive against these defendants.

ARGUMENT.

May it please the Court:

In presenting the law, as we understand it in this case, for the plaintiff in error, we will first refer to the statutes of Illinois giving judgment liens, and providing for sale of lands under such liens after the death of the judgment debtor.

Statutes of Illinois, ed. 1863:

Sec. 1 (p. 602, vol. 1), provides that "all and singular the goods "and *chattles*, lands, tenements and real estate, of every person- "against whom any judgment has been or shall hereafter be ob- "tained, in any court of record, either at law or in equity, for any "debt, damages, costs, or other sum of money, shall be liable to "be sold upon execution, to be issued upon such judgment; and "the said judgment shall be a lien upon such lands, tenements "and real estate, from the last day of the term of the court in "which the same may be rendered, for the period of seven years; "*Provided*, That execution be issued at any time within one year "on such judgment; and from and after the said seven years the "same shall cease to be a lien on any real estate, as against *bona fide* "purchasers, or subsequent incumbrances by mortgage, judgment "or otherwise: *Provided*, That in case the party in whose favor "any such judgment shall have been entered, shall be restrained "by injunction out of chancery, or order of any judge or court, "either from issuing execution or selling thereon, the time which "he shall be so restrained shall not be deemed or considered as "any part of the said seven years. The term 'real estate,' in this "section, shall be construed to include all interest of the defendant "or any person to his use, held or claimed by virtue of any deed, "bond, covenant, or otherwise, for a conveyance, or as mortgagee "or mortgagor of lands in fee, for life or for years."

SECTION 2, page 610, Volume 1, provides that:

"When any judgment has become a lien as aforesaid, and the "defendant happen to die before execution shall have been issued "thereon, the remedy of the person in whose favor the said judg- "ment shall have been rendered, shall not be delayed or suspend- "ed, by reason of the non-age of an heir or heirs of such defend- "ant; but no execution shall issue upon such judgment until the "expiration of one year after the death of such defendant; nor "shall any previous law of this State, which gives no preference to "the claims of a creditor of a deceased debtor, be so construed as "to impair or affect the lien of any judgment as aforesaid."

SECTION 3, page 603:

"The legal holder or holders by record, of any certificate of pur- "chase of lands from the United States shall be deemed to be with- "in the true intent and meaning of this chapter."

Rogers v. *Brent*, 5 Gilman, (Ill.) 573:

This case decides, that the lien attaches to land entered by a defendant at the government office; and, upon the same principle, we think, the lien attaches to the title in the grantee of the party making the entry.

SECTION 37, page 610, Volume 1, provides that:

"Whenever a judgment has been, or may hereafter be obtained "in any court of record in this State, against any person or per- "sons, who has or shall after the rendition of said judgment, die, "it shall be lawful for execution to issue against the land and ten- "ements of said deceased person or persons, without first reviving "the judgment against their heirs or legal representatives: *Pro-* "*vided, however*, the plaintiff or plaintiffs in execution, or his or "their attorney shall give to the executor or administrator, if there "be any, of said deceased person or persons, at least three months "notice in writing, of the existence of said judgment, before the

" issuing of execution: *And provided further*, That no execution " shall issue until after the expiration of twelve months from the " death of such deceased person or persons."

We do not expect counsel to deny, that the judgment was a lien upon the land in question. It was so considered in the court below, and so treated upon the trial; therefore, as we understand the case, the real question to be here presented is, as to the regularity of the issuing of the execution upon the judgment. after the death of defendant Gilbraith, and making sale thereon.

It may be proper to call the special attention of the court to that part of section one above given, which defines the meaning of the term " real estate," as understood in that chapter. It includes " all " interests of the defendant, or any person to his use, held or " claimed by virtue of any deed, bond, covenant, or otherwise, for " the conveyance, &c." It seems from this provision of law, that a judgment is a lien upon an equity in real estate, as well as in cases of fee simple.

The judgment being rendered some months prior to January 27, 1842, the date of the deed from Chatfield to Gilbraith, the lien attached the moment he received the deed, to whatever title was conveyed by Chatfild. So that, this judgment lien was, in fact, prior to the quit claim title of Williams from Gilbraith.

The deed from Chatfield to Gilbraith, is, in form, an absolute conveyance of the lands in question, and all right, interest and claim whatsoever, with covenants of warranty forever.

II.

It is very clear from the reading of the second section before given, that the statute designed to preserve all liens of judgments, and to give to the creditor a right to obtain title under such lien after the death of the defendant, without first reviving the judg-

ment as at common law. The section provides, that when the lien exists, the plaintiff's remedy shall not be delayed, or suspended, by reason of non-age of any heir, or heirs, of such defendant, beyond one year after the death of the defendant, and that no preferences shall impair, or effect, the lien of the judgment.

We submit, if the court please, that this statute fixed the right of the plaintiff and his judgment lien upon this property at the defendant's death, and declared it to be in effect as perfect and valid, after one yrars' time had elapsed, as it would have been had he been living. This being so, beyond all doubt, then what was necessary to enable the plaintiff to sell the property in the manner pointed out by law? Section 37 provides:

"*That it shall be lawful for execution to issue against the lands* "*and tenements of the deceased person, or persons, without first re-* "*viving the judgment against their heirs, or legal representatives.*"

The only proviso attached to this positive provision of law, is notice to the executors, or administrators, *if there be any*, of the existence of the judgment before the execution can be issued, and that twelve months must elapse after the death of a party, before execution can issue.

The statute dispenses with the common law proceedings, and in cases only where there are administrators or executors appointed, it is necessary to give notice. Without the appointment of such officers, the execution can be issued by the clerk, as soon as a year has elapsed after the death of the defendant, without notice.

It was not incumbent upon the plaintiff to show that administrators had been appointed, upon the estate of Gilbraith. It would be regular for the clerk to issue execution against the lands and tenements of the deceased, after twelve months had elapsed, and for the sheriff to make sale of lands on which the judgment was a lien, which sale could only be defeated—if the doctrine contended for by defendant's counsel be true—by showing that administrators

had been appointed at the time the execution issued, without notice, or that twelve months had not elapsed after the death of the defendant.

It is evident the design of the statute was to give to the creditor a cheap mode, in which to enforce the lien which his judgment gave him. The lien once attached, it will operate until the judgment is satisfied.

Reynolds v. *Henderson*, 2 Gilman, 118.

The common law rule has not been changed in any cases, except of liens. No such proceedings can be had on judgments which give no lien. It would be irregular to issue execution in this way, upon a judgment not a lien, and direct the execution to the sheriff of another county, and sell lands of the deceased in that county, for the reason, a judgment in another county, does not give a lien. Such judgment creditors of a deceased defendant, have no better or greater rights than other creditors who have no judgments.

Turney v. *Turney*, 12 Ill., 141:

In this case it was held that, in the distribution of assets of deceased persons, under our statute, judgment creditors *without a lien*, and simple contract creditors, stand upon the same footing. So, we think, it is clear that, in all cases where a judgment is a lien, and the defendant dies, the issuing of an execution, without notice, to the administrator of the existence of the judgment, it is not void. The statute changes the common law rule, which required the issuing of a process of court and an order reviving the judgment, to an act of the party plaintiff, therefore, an execution issued without the notice, is simply voidable, and a sale made thereon is good, until the court from which the writ issued sets it aside.

In the case of *Laflin* v. *Harrington*, 16 Ill., p. 303, the court held the title good on which to claim color of title, although the court say, in the opinion, that Laflin's title was void; it seems from

from the case of *Finch* v. *Martin*, 19 Ill., p. 111, Chief Justice CATON considered that case as only deciding the title voidable. He says, it was not, however, void upon its face; *prima facie*, it was good, "it could only be vitiated by proof of an extraneous "fact."

We submit, if the court please, that such is the law in cases where the execution issued, without an order of court, against the lands and tenements of a deceased person, where the judgment is a lien, for the reason, the record is regular under the statute. The fact of notice, or the want of notice, is no part of the record, as the issuing and service of a *scire facias* to revive a judgment, must be a part of the record. But, if the court please, we are not driven to sustain this position, in the case under consideration, for the reason, as before stated, the order of the court directing an execution to issue, fully protects the plaintiff, and makes his title good.

Counsel for defendant in error, may, as heretofore, claim that the case of *Brown* v. *Parker*, 15 Ill., 307, is an authority in point, to show that the execution and sale, in this case, is void, therefore the plaintiff could not recover on his title. We submit, that the case does not sustain such a position, for the reason, in that case, one of the plaintiffs was dead when the execution issued, and that it issued in favor of a dead man, instead of the representatives, as the statute provided. The court said, that "judicial proceedings "cannot be carried on in the name of a dead man." We grant it; and say the execution, in our case, did not issue in favor of a dead man; and for the reasons given by the court in that case, the record was regular, and if proof had been made of administrators being appointed, it would not have changed the record, nor in any way prejudiced the title, as we had not taken execution until twelve months had elapsed after the death of Gilbraith. The record was presumptive evidence, to say the least of it, that notice had been given, which placed the burden of proof on the defendants to show there had been no notice. The defendants could have called the administrators, to show want of notice, if such had been the case.

We submit, that the fact appearing that so long a time had elapsed, and no claim of any party interested in the estate being made, the fact of the sale being made must have come to the knowledge of the heirs and administrators, and, no one objecting, should be satisfactory evidence that they had notice, andthat the sale was regular.

We submit, if the court please, that we have shown that the judgment was a lien on the property in question, and that the plaintiff, under the statute, had a right to his execution and a sale of the property, and that the record, without the order of court, was *prima facie* regular, and that the burden of proof of want of notice, it such thing existed, was upon the defendant, and there being none, the plaintiff's title was good.

The defendants in error claim title from Gilbraith, by quit claim deed, dated May 31st, 1842, which shows, so far as the rights of the plaintiff are concerned, *there was no notice required to the administrators or heirs.* The deceased had, long prior to his death, conveyed all his right in the property to Williams, and, of course, it was subject to the judgment lien. Wales, the tenant of Williams, being one of the defendants, had notice, and we are satisfied Williams had, and no doubt it was for him and the other defendants that counsel appeared to resist the motion, and the court then fully understood the fact that Williams claimed title under Gilbraith. When the defendants had shown title, as they did by the deed from Gilbraith, in May, 1842, it then became manifest that the representatives and heirs of Gilbraith *had no interest in the property;* therefore, they could not set up want of notice to the administrators of Gilbraith. It would be *sheer folly*, it seems to us, *to require of the plaintiff proof that notice had been given to a party who had no interest whatever in the property.* We submit, if the court please, that these defendants could not, after showing that the title had passed from the deceased, claim that this plaintiff could not enforce his judgment lien without proof of notice to parties who could not have had the least possible interest in the

property. If the execution was irregular it was so from want of notice, which these defendants are estopped from setting up, *after showing title in themselves.* The defendants are in error in supposing themselves entitled to the same rights that the heirs would be if this suit was prosecuted against them. The question upon the trial should have been, simply, who had the first lien or title to the property.

But we are not obliged to rest our case upon the points already discussed; we have another, and, as we think, conclusive point in the case, upon which we rely with confidence.

III.

The record showing the issuing of execution, by order of court, it is conclusive against these defendants.

Under this point in our argument we have to say, that if the order of the court, made on the 24th day of September, 1847, that another execution issue on the judgment, is to be treated as all orders and judgments of a court of record, by law, are treated, then there is nothing further for us to say. But counsel may contend that the record should have set out the notice, and proof of the notice should have been made to appear in the record, or have been proved upon the trial, before this court can say that the order of the circuit court of Ogle county was valid and of any force whatever. I may state this too strong for counsel at this day and age of legal proceedings, but such we understand to have been the position in the court below.

The record shows that the plaintiff made a motion to set aside a sale made on execution issued on the same judgment, for what reason the record does not advise us. The record also shows that very able and learned counsel appeared for the defendants generally, (it not stating that they appeared specially for any purpose, or

for any one of the defendants,) and that the court was fully advised, and on that motion ordered the execution to issue, and it was done. It may be true that this record is not as full and definite as it might have been, and at this day would, in like cases, be made. But the record does show that the court ordered the execution to issue, and it did accordingly issue, against the lands and tenements of defendant Gilbraith.

We submit, if the court please, that from this record, and order of the circuit court of Ogle county, it is to be presumed that Judge CATON had before him satisfactory proof that the administrators of Smith Gilbraith had received notice of the judgment, and of the motion, and that it was shown that twelve months had elapsed after the death of defendant Gilbraith, and that, to protect the rights of the estate, the administrators, or defendant Williams, who claimed under Gilbraith, had employed able counsel to appear and look to such interests. These things must be admitted to have been made to appear to the court, or no such order would have been made. It is not law for counsel to say that the record should contain the facts as to notice, that it was in writing, and served three months prior, the same as a record should show process, or appearance, to give a judgment validity. Such doctrine can not prevail, we think, in this court.

As we have before said, the issuing and service of a *scire facias* and order of court must appear of record. At common law the want of such a record would make an execution void—absolutely void. But it is not so with the requirements of the statute. Can it be said that it is necessary for a plaintiff, in taking an execution in such cases, to make an affidavit of the death of the defendant; that twelve months had elapsed; and that three months notice had been given to the administrators; and such affidavit be filed with the clerk who is called upon to issue an execution? The law requires no such thing; and if it should be done it is not evidence, and could not be used as evidence upon a trial in ejectment. Nothing of the kind could go into the record.

Can it be said that a plaintiff can not notify the representatives of a deceased defendant that he will apply for an order that an execution issue against the lands and tenements on which a judgment is a lien, and that upon such notice the court has no power or authority to order an execution to issue under the statute? We think it can not be so claimed. It is impossible for counsel to sustain any such doctrine, upon principle or authority.

It may be said that it is to be presumed that all executions issue by order of court, although issued by the clerk according to the provisions of the statute. Such, we claim, is not the rule.

We hold that, in all special cases, or in cases where the statute points out any other course, or requires anything to be done other than in ordinary cases, then it is competent for the party claiming the right to apply to and obtain and order of court, and when the order is made, although upon a statute, the law presumes that the order is within the law, and that the parties had complied with the statute in all things in obtaining the order; unless this be so there is no use of legal proceedings. Believing, as we do, that the law sustains us in this position, then the only question which remains to be determined is, can the order of the court, directing the issuing of the execution, be declared void in this proceeding while it remains in full force? We say, that the order is binding and conclusive, and all proceedings had under it, until it is set aside by some proceeding. Courts have never doubted this rule of law, and cases can be found in the books where orders and judgments have been entered, and the record showing an error upon its face; yet it has always been held that the order or judgment must stand until reversed in the manner pointed out by law. The error in disregarding the rule would be greater than it could possibly be to let the irregular order stand.

Regina v. *Finney*, 2d of Carrington & Kirwan, 774, and *Priggs* v. *Adams*, 2d Salk., 674, are cases in point, showing how closely

the rule we contend for has been adhered to. These cases have been cited in a great number of cases in this country, as the settled rule of law.

It is a just and salutary principle of law, that what is done by a judicial tribunal, possessing general powers, and within the scope of those powers, must be deemed to have in itself the force necessary for its own support, and can not be called in question except by the regular modes of examination, which are provided for in the investigation of real or imputed error in judicial proceedings.

In the case of *Priggs* v. *Adams*, 2 Salk., 674, which was trespass and false imprisonment, the defendant, justified, as an officer, under a *ca. sa.* on a judgment in the court of common pleas, upon a verdict for five shillings for a cause of action in Bristol. The plaintiff replied, and set forth the private act of parliament, etecting the court of conscience in Bristol, wherein was a clause that, if any person bring such action in any of the courts of Westminster, and it appeared upon trial to be under forty shillings, that no judgment shall be entered for the plaintiff, and if it be entered, that it shall be void. Upon demurrer, the question was, whether the judgment was so far void, that a party shall take advantage of it, in this collateral action. *And the court held that it was not; and construed the statute to mean, that it should be void only at the instance of the defendant, in direct proceedings taken by him to vacate or set aside the judgment on that ground.*

If the court please, let us apply the principle in that case to the one under consideration, and treat the statute as declaring that if an execution issue against the lands and tenements of a deceased defendant, without the record showing that notice was given to the administrator, that it shall be void ; and then, we say, that the defendants in this suit cannot take advantage of the objection in this way. None, but the representatives of the deceased defendant, or the heirs, could make the objection; and they, only, by motion to set aside, or other proceedings to vacate the order. But the stat-

ute of Illinois does not so provide; on the contrary, it allows the writ to issue against the lands and tenements of the deceased, and that being done by order of the court, it is regular and must stand forever as against these defendants. The court of Ogle county had jurisdiction of the case, and of the subject matter, and the orders of the court cannot be impeached, for the reason that there was not sufficient proof for the the action of the court. Its judgment was upon the proofs, and if sufficient to satisfy the court, however much it may have erred, the order must stand, and be held valid in this proceeding.

The People v. *Peck*, 3 Scam. Ill., 107.
Grignon v. *Astor*, 2 Howard, U. S., 319.

This latter case was where a county court had jurisdiction, and ordered a sale of a decedent's estate on the representation and finding of certain facts. The record showed that a petition was presented, and the order made.

Baldwin J., in the opinion of the court, says:

"The granting the license to sell, is an adjudication upon all "the facts necessary to give jurisdiction, and whether they existed "or not, is wholly immaterial, if no appeal is taken. The rule is "the same whether the law gives an appeal or not; if none is "given from the final decree, it is conclusive on all whom it con- "cerns. The record is an absolute verity; to contradict which, "there can be no averment, or evidence; the court having power "to make the decree, it can be impeached only by the fraud in the "party who obtains it. (6 Peters, 729.) A purchaser under it is "not bound to look beyond the decree, if there is error in it of the "most palpable kind. If the court which rendered it, have, in the "exercise of jurisdicton, disregarded, misconstrued, or disobeyed, "the plain provisions of the law which gave them the power to "hear and determine the case before them, the title of a purchaser "is as much protected, as if the adjudication would stand the test "of a writ of error; so, where an appeal is given, and not taken in

"the time prescribed by law. These principles are settled as to "all courts of record which have an original general jurisdiction "over any particular subject; they are not courts of special or "limited jurisdiction; they are not inferior courts, in the technical "sense of the term, because an appeal lies from their decisions. * *

"The true line of distinction between courts whose decisions are "conclusive, if not removed to an appellate court, and those whose "proceedings are nullities, if their jurisdiction does not appear on "their face, is this: a court which is competent, by its constitution, "to decide on its own jurisdiction, and to examine it to a final "judgment without setting forth, in their proceedings, the facts "and evidence on which it is rendered, where there is absolute "verity not to be impugned by averment or proof, to the con- "trary, is of the first description; there can be no judicial inspec- "tion behind the judgment, save by appellate power."

We submit, may it please the court, that we have shown that the order of the Ogle county circuit court cannot be impugned by proof, that the court did not have sufficient proof before it to show notice to the administrator. That the record need not set forth the fact of notice, and the evidence upon which the court acted; nor the evidence that the attorneys appeared for the administrators. The record shows sufficient to give the court jurisdiction. It shows a motion and appearance of counsel, and the order, and that is sufficient, as we understand the law to sustain the writ and the sale made upon it. Many other cases might be cited to sustain the doctrine here contended for, but we do not consider it necessary. If there is any doubt upon the point, then we say, that the plaintiff, although the judgment on which the execution was issued for his use, he is to be protected in the purchase as fully as a stranger, unless there is fraud shown on his part; such we consider to be the law.

Claiming, as we do, the law to be as we contend, it is clear that the court erred in its instructions to the jury. It will only be

necessary to refer the court to the record, showing the instructions asked and refused. The court instructed the jury, that the order of the circuit court of Ogle county was a nullity; that the execution, sale and deed, were all null and void.

We will now submit, if the court please, this case on the part of the plaintiff in error, believing that we have shown, in our feeble manner, that, in the judgment, there is manifest error, and that it ought to be reversed.

Respectfully submitted,

E. S. SMITH,

November 24th, 1864. *Attorney for Plaintiff in Error.*